

CITY OF BURLINGTON

Request for Proposals

Restaurant Concessions & Leased Space at the Burlington Community Boathouse

City of Burlington, Vermont

Issued: December 5th, 2019

Due: December 20th, 2019 by 4:00 P.M. EST

I. SITE BACKGROUND

Burlington Community Boathouse, 0 College Street, Burlington, VT 05401

The City of Burlington Department of Parks, Recreation and Waterfront (“City”) is hereby requesting proposals for providing food and beverage concessions and room rental management at the Burlington Community Boathouse. The selected responder to this request for proposals (“RFP”) will be issued a five (5) year service contract and lease for the location, pursuant to the terms of this RFP and a mutually agreed upon Concession Agreement to be executed after the selection process is complete.

II. SCOPE OF WORK & LOCATION INFORMATION

SCOPE:

Provide food and beverage concessions within the restaurant space at the Burlington Community Boathouse. Additionally, manage the recruitment and rental schedule for the upstairs multi-function Wakefield Room.

LOCATION INFORMATION:

Burlington Community Boathouse - The Burlington Community Boathouse is a seasonal facility offering dockage to seasonal and transient boats, public space and concession services. Outside dock seating is available and is outlined in boundary by wooden bollards. Upstairs is the Wakefield Room and can be utilized as a rental space or additional restaurant seating. Outdoor space is available upstairs on the south end.

Two kitchens are included in the leased restaurant space, one upstairs and the other on the main floor. The main floor kitchen was recently renovated and consists of: a hood ventilation system, stainless steel prep counters with built in refrigeration, stand up cooler, hand sink, grease trap, and ceiling hung storage racks. The main floor also has a separate walk-in storage room for perishables.

The upstairs prep kitchen consists of: a three bay sink, a hand sink, open space for prep counters, and ventilation exhaust fan. Two small utility closets are located upstairs, one within the kitchen

layout and the other outside, north of the kitchen. All City owned assets are compiled in Attachment A to this RFP.

The Wakefield Room (1244sq ft.) is the upstairs multi-function rental room. The room has an open layout adjacent to the kitchen with composite wood style flooring and ceiling fans. Both the east and west side have floor to ceiling glass doors for enhanced scenery and a southern door that open to an outside space.

The chosen concessionaire shall have the right to use all concession equipment owned by the City on the premises. For the site tour, the City owned items will be marked. The chosen concessionaire shall be responsible to the City for any damage of loss caused to such equipment on the part of its employees or agents. The chosen concessionaire will be responsible for cleaning all equipment and returning the equipment back to the City in a clean state after each season is complete. Maintenance, due to use, is the responsibility of the chosen concessionaire. All additional equipment necessary shall be the responsibility of the concessionaire to provide.

The Boathouse concession service will have minimum daily hours of operation from 8:00am to sunset, starting the Saturday preceding Memorial Day through Labor Day unless otherwise agreed. Adjusted hours are allowed from Labor Day through October 15th for consideration of weather and daylight. The concessionaire may close the restaurant operation due to inclement weather after giving notice to the City. The Wakefield Room may be and is encouraged to be rented year round, as long as the chosen concessionaire can properly maintain and schedule the facility.

Proposals for service(s) rendered shall meet all city, state and federal regulations, licensing and insurance requirements, and be of a type expected and accepted by visitors to the Boathouse and Burlington in general.

All sales shall be made from within the concession area. The chosen concessionaire shall not use Styrofoam, which is prohibited. Glass containers may be used only by special waiver. Vending for special events or promotions may be permitted outside the concession area subject to approval. Water/wastewater, gas and electric utilities are provided by the City. Concessionaire will be responsible for the removal of trash, recycling and kitchen grease. Composting is required and is the responsibility of the concessionaire. Cleaning of restaurant space, rental space, utilized hallways, and restrooms required.

The City intends to guarantee one concession business for the next five (5) years the Boathouse, with the option of a 3 year renewal upon conclusion of the 5 year term, as long as both parties are in agreement. This can result in the successful concessionaire to operate for eight (8) continuous years if all terms are adhered and agreed to and both parties agree, based on the terms outlined in the future executed contract.

The City encourages proposals that offer physical improvement to the facility.

III. RESPONSE FORMAT

Responses to this RFP must be not more than 24 pages in length (12 double-sided or 24 single-sided pages). A selection committee will evaluate each proposal. Evaluation criteria will include but will not be limited to:

1) Qualifications Detail & Proposal consisting of:

- a. **Cover letter:** This will set the vision for the proposed restaurant experience. Please include a statement of understanding & approach to this concession operation;
- b. **Proposed Owner and Operator:** Clearly indicate the applicant's designated owner, manager, as well as any co-owner or investor who will be assigned to the work and each of their respective expertise in such work. Please detail the type of ownership, and name and location of parent company and subsidiaries, if any;
- c. **Specific Restaurant & Concession Experience:** Descriptions detailing completed, similar or relevant restaurant concession experience that the applicant, co-applicant and/or investor has executed. Relevant information of previous restaurant locations, type of cuisine and other relevant experience to a fast-paced seasonal operation is preferred. Links to similar or relevant operations are encouraged;
- d. **List of References:** Provide a minimum of three references with which the applicant has provided similar services within the last five years. Include the name and telephone number of the contact person and a description of the role and services provided to that contact. If you have rented restaurant space prior to this submission, please include the contact information for former or current lessor.
- e. **Menu:** Please provide a sample menu with pricing. Menus should include mention of any locally sourced products and availability of quality and healthy food options to be provided. A variety of price points for dining options are encouraged.
- f. **Upper Level Room Management:** Provide quality and creative examples of your proposed use of the Wakefield multi-function rental room located upstairs at the Boathouse.
- g. **Compensation:** All proposals shall include a compensation package to the City based payment of 15% gross receipt of revenues, with a minimum of \$135,000 provided per year. Please include any additional compensation or sponsorship opportunities to the City in the proposal. The City will not accept proposals with a compensation package under \$135,000 annually. A yearly comprehensive sales and rental report is required from the chosen concessionaire, to be delivered annually to the City by January 31st.

All proposals in good standing will be evaluated. The final selection will be made by a committee comprised of BPRW Department representatives and subject to approval by the Board of Finance and City Council. The proposer may be asked to make one or more presentations as part of the evaluation process.

Responses to this RFP must be received per the schedule outlined in the "Submissions" section of this RFP to be considered. Proposals must be submitted in digital (PDF) or printed formats. Applicants will receive a confirmation email once their proposal is received. Please ensure that the document is easily printable in an 8.5x11 format.

IV. TERM OF AGREEMENT

Subject to earlier termination as provided hereinafter, the contract shall be for five years, with the first option of renewal for an additional 3 years if agreed to by both parties, beginning January 1, 2020 and ending December 31, 2024.

V. CONCESSION SELECTION

In compliance with the City of Burlington's Procurement Policy, BPRW will evaluate all complete proposals from qualified applicants on the following seven criteria, listed below. Applicants will be scored up to a maximum of 100 points based on the following:

1. **Experience & Qualifications;** Applicants will be graded based on previous or current restaurant concessions, business legal standing and the experience of the applicant and/or applicants' partners. Consideration will be made to knowledge of the local community and local food sourcing. **(20 pts)**
2. **Operational Knowledge & Innovation;** demonstrates understanding and mastery of the restaurant industry, experience in a fast-paced environment, and innovative and creative use of space to maximize the retail experience **(20 pts)**
3. **Menu Quality;** demonstrates a variety of menu options, considering healthy choices and dietary needs **(20 pts)**
4. **Price-points & Rental Fees;** Displays a range of price points for dining option. Proposes fees for any room rentals **(10 pts)**
5. **Quality, Clarity & Vision for use of space;** Presentation of proposal materials, as well as proposals that create a vision for how the space will look, function and be utilized **(10 pts)**
6. **References, Business Standing & Prior Lessor Evaluation;** BPRW will contact all references, follow-up with current or previous town/cities tax departments to ensure good standing, and contact current or previous landlords/lessors of rented space the applicant has utilized for place of business **(10 pts)**
7. **Creative Considerations;** BPRW will evaluate those applications that propose infrastructure improvements, creative use of space, any proposed monetary compensation beyond the 15% baseline and the applicants' demonstrated ability to be fair, respectful and considerate of our greater community, partners and customers. **(10 pts)**

VI. SUBMISSIONS

Proposals should be submitted via email to Erin Moreau, Waterfront Superintendent & Harbormaster, Department of Parks, Recreation & Waterfront, emoreau@burlingtonvt.gov. Proposals should be clearly labeled in the email subject line "Boathouse Concessions RFP Proposal".

There will be a site visit for all interested parties on **December 12th from 10am – 11am**. Applicants will have the opportunity to see all of the equipment and space available for restaurant operations. Questions concerning this RFP should be directed to Erin Moreau, via email only and received no

later than **4:00 P.M. December 16th, 2019**. All answers to questions (all names withheld) will be publicly posted on our website, www.enjoyburlington.com for all interested parties to see.

Please submit all final proposals by 4:30 P.M. December 20th, 2019.

Quick Glance Timeline:

December 12th, 10am – 11am: Tour of Boathouse Site

December 16th, 4pm - All questions due

December 20th, by 4:30pm – All Proposals Due

VII. CONTRACTING

The Operator, prior to being awarded a contract, shall apply for registration with the Vermont Secretary of State's Office to do business in the State of Vermont, if not already so registered. The registration form may be obtained from the Vermont Secretary of State, 128 State Street, Montpelier, VT 05633-1101, PH: 802-828-2363, Toll-free: 800-439-8683; Vermont Relay Service – 711; web site: <https://www.sec.state.vt.us/>. The contract will not be executed until the Contractor is registered with the Secretary of State's Office. The successful Contractor will be expected to execute sub-agreements for each sub-Contractor named in the proposal upon award of this contract.

Prior to beginning any work, the Contractor shall obtain Insurance Coverage in accordance with the Burlington Contractor Conditions (attachment B in this RFP). The certificate of insurance coverage shall be documented on forms acceptable to the City.

If the award of the contract aggrieves any firms, they must appeal in writing to the City. The appeal must be post-marked within seven (7) calendar days following the date of written notice to award the contract.

VIII. AGREEMENT REQUIREMENTS

The selected operator will be required to execute a contract with the City on the terms and conditions required by the City, including but not limited those in the Burlington Contractor Conditions (Attachment B) and the attached Draft Agreement (Attachment C).

IX. LIMITATIONS OF LIABILITY

The City assumes no responsibility or liability for costs incurred by parties responding to this Request for Proposals, or responding to any further requests for interviews, additional data, etc., prior to the issuance of the contract.

X. COSTS ASSOCIATED WITH PROPOSAL

Any costs incurred by any person or entity in preparing, submitting, or presenting a proposal are the sole responsibility of that person or entity. The City will not reimburse any person or entity for any costs incurred.

XI. INDEMNIFICATION

Any party responding to this Request for Proposals is acting in an independent capacity and not as an officer or employee of the City. Any party responding to this Request for Proposals will be required to indemnify, defend, and hold harmless the City, its officers, and employees from all liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the responding party's acts and/or omissions in or related to the submission of the response.

XII. REJECTION OF PROPOSALS

The City reserves the right to reject any or all proposals, to negotiate with one or more parties, or to award the contract to the proposal the City deems will meet its best interests, even if that proposal is not the highest compensation bid. The City reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals. This Request for Proposals in no way obligates the City to award a contract.

XIII. OWNERSHIP OF DOCUMENTS

Any materials submitted to the City in response to this Request for Proposals shall become the property of the City unless another arrangement is made by written agreement between the City and the responding party. The responding party may retain copies of the original documents.

XIV. PUBLIC RECORDS

Any and all records submitted to the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be handled is solely within the purview of City. All records the responding party considers to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, or that the responding party otherwise seeks to have the City consider as exempt must be identified clearly and specifically at the time of submission. It is not sufficient to merely state generally that a proposal is proprietary, contains a trade secret, or is otherwise exempt. Particular records, pages, and sections which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

Attachment A

FIXTURES & EQUIPMENT – CITY OWNED

1. Hood Ventilation System (1st Level)
2. Walk-in Cooler (1st Level)
3. Under Counter Refrigerator (1st Level)
4. Grease Trap (1st Level)
5. Cabinets & Counter Work (1st Level)
6. One Hand Sink (1st Level)
7. Three-bay Pot-sink (2nd Level)
8. Hand Sink (2nd Level)
9. Exhaust Fan (2nd Level)
10. Ceiling Fans & Lights (2nd Level)
11. Frame for Awning (Dock level)

ATTACHMENT B

BURLINGTON STANDARD CONTRACT CONDITIONS

- 1. RELATIONSHIP:** The Contractor is an independent contractor and shall act in an independent capacity and not as officers or employees of the City. To that end, they shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Contractor shall provide its own tools, materials or equipment. The Parties agree that neither the Contractor nor its Principal(s) or employees is entitled to any employee benefits from the City. Contractor understands and agrees that it and its Principal(s) or employees have no right to claim any benefits under the Burlington Employee Retirement System, the City's worker's compensation benefits, health insurance, dental insurance, life insurance, or any other employee benefit plan offered by the City. The Contractor agrees to execute any certifications or other documents and provide any certificates of insurance required by the City and understands that this Agreement is conditioned on its doing so, if requested.

The Contractor understands and agrees that it is responsible for the payment of all taxes on the above sums and that the City will not withhold or pay for Social Security, Medicare, or other taxes or benefits or be responsible for any unemployment benefits.

- 2. INDEMNIFICATION:** The Contractor shall indemnify, defend, and hold harmless the City and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the Contractor's acts and/or omissions in the performance of this Agreement. If the City, its officers, agents, or employees are notified of any claims asserted against it to which this indemnification provision may apply, the City shall immediately thereafter notify the Contractor in writing that a claim to which the indemnification provision may apply has been filed. Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The City retains the right to participate, at its own expense, in the defense of any claim, and to approve all proposed settlements of claims to which this provision applies. Under no conditions shall the City be obligated to indemnify the Contractor or any third party, nor shall the City be otherwise liable for expenses or reimbursement including attorney's fees, collection costs, or other costs of the Contractor or any third party.
- 3. INSURANCE:** Prior to beginning any work, the Contractor shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the City. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the Effective Date of the Contract. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. In the event that this Contract extends to greater than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Copies of any insurance policies may be required. Each policy (with the exception of professional liability and worker's compensation) shall name the City as an additional insured for the possible liabilities resulting from the Contractor's actions or omissions. It is agreed that the liability insurance furnished by the Contractor is primary and non-contributory for all the additional insured.

The Contractor is responsible to verify and confirm in writing to the City that: (i) all subcontractors must comply with the same insurance requirements as the Contractor; (ii) all coverage shall include adequate protection for activities involving hazardous materials; and (iii) all work activities related to the Contract shall meet minimum coverage and limits.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor's operations. These are solely minimums that have been developed and must be met to protect the interests of the City.

A. GENERAL LIABILITY AND PROPERTY DAMAGE: With respect to all operations performed by the Contractor, subcontractors, agents or workers, it is the Contractor's responsibility to insure that general liability insurance coverage, on an occurrence form, provides all major divisions of coverage including, but not limited to and with limits not less than:

1. Premises Operations
2. Independent Contractors' Protective
3. Products and Completed Operations
4. Personal Injury Liability
7. Medical Expenses

Coverage limits shall not be less than:

- | | |
|----------------------------------|-------------|
| 1. General Aggregate | \$2,000,000 |
| 2. Products-Completed/Operations | \$2,000,000 |
| 3. Personal & Advertising Injury | \$1,000,000 |
| 4. Each Occurrence | \$1,000,000 |
| 5. Damage to Rented Premises | \$ 250,000 |
| 6. Med. Expense (Any one person) | \$ 5,000 |

B. WORKERS' COMPENSATION: With respect to all operations performed, the Contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont and ensure that all subcontractors carry the same workers' compensation insurance for all work performed by them under this contract. Minimum limits for Employer's Liability:

1. Bodily Injury by Accident: \$500,000 each accident
2. Bodily Injury by Disease: \$500,000 policy limit,
\$500,000 each employee

C. AUTOMOBILE LIABILITY: The Contractor shall carry commercial automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the Contract. Each policy shall provide coverage with a limit not less than: \$1,000,000 - Combined Single Limit for each occurrence.

D. UMBRELLA LIABILITY:

1. \$1,000,000 Each Event Limit
2. \$1,000,000 General Aggregate Limit

4. GENERAL COMPLIANCE WITH LAWS: The Contractor shall comply with all applicable Federal,

State and local laws, including but not limited to the Burlington Livable Wage Ordinance, the Non-Outsourcing Ordinance, and the Union-Deterrence Ordinance and shall provide the required certifications attesting to compliance with these ordinances (see attached ordinances and certifications).

Provisions of the Contract shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both Parties. If, for any reason, a provision in the Contract is unenforceable or invalid, that provision shall be deemed severed from the Contract, and the remaining provisions shall be carried out with the same force and effect as if the severed provisions had never been a part of the Contract.

5. **CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Contract, the Contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. Contractor, and any subcontractors, shall comply with any Federal, State, or local law, statute, regulation, executive order, or rule that applies to it or the services to be provided under this contract concerning equal employment, fair employment practices, affirmative action, or prohibitions on discrimination or harassment in employment.
6. **CHILD SUPPORT PAYMENTS:** By signing the Contract, the Contractor certifies, as of the date of signing the Contract, that the Contractor (a) is not under an obligation to pay child support; or (b) is under such an obligation and is in good standing with respect to that obligation; or (c) has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan. If the Contractor is a sole proprietorship, the Contractor's statement applies only to the proprietor. If the Contractor is a partnership, the Contractor's statement applies to all general partners with a permanent residence in Vermont. If the Contractor is a corporation, this provision does not apply.
7. **TAX REQUIREMENTS:** By signing the Contract, the Contractor certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, the Contractor is in good standing with respect to payment, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of signature on the Contract.
8. **REGISTRATION:** The Contractor agrees to be registered with the Vermont Secretary of State's office as a business entity doing business in the State of Vermont at all times this contract is effective. This registration must be complete prior to contract execution.
9. **PERSONNEL REQUIREMENTS AND CONDITIONS:** A Contractor shall employ only qualified personnel with responsible authority to supervise the work. The City shall have the right to approve or disapprove key personnel assigned to administer activities related to the Contract.

Except with the approval of the City, during the life of the Contract, the Contractor shall not employ:

1. Any City employees who are directly involved with the awarding, administration, monitoring, or performance of the Contract or any project(s) that are the subjects of the Contract.
2. Any City employees so involved within one (1) year of termination of employment with the City.

The Contractor warrants that no company or person has been employed or retained (other than a bona fide employee working solely for the Contractor) to solicit or secure this Contract, and that no

company or person has been paid or has an Contract with the Contractor to be paid, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, the City shall have the right to annul the Contract, without liability to the City, and to regain all costs incurred by the City in the performance of the Contract.

The City reserves the right to require removal of any person employed by a Contractor, from work related to the Contract, for misconduct, incompetence, or negligence, in the opinion of the City in the due and proper performance of its duties, or who neglects or refuses to comply with the requirements of the Contract.

- 10. TRANSFERS, SUBLETTING, ASSIGNMENTS, ETC:** Contractor shall not assign, sublet, or transfer any interest in the work, covered by this Contract, without prior written consent of the City and further, if any subcontractor participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the City. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the Contractor of responsibility for the performance of that portion of the work so transferred. The form of the subcontractor's Contract shall be as developed by the Contractor and approved by the City. The Contractor shall ensure that insurance coverage exists for any operations to be performed by any subcontractor as specified in the insurance requirements section of this Contract.

The services of the Contractor, to be performed under the Contract, shall not be transferred without written authorization of the City. Any authorized sub Contracts shall contain all of the same provisions contained in and attached to the original Contract with the City.

- 11. CONTINUING OBLIGATIONS:** The Contractor agrees that if because of death, disability, or other occurrences, it becomes impossible to effectively perform its services in compliance with the Contract, neither the Contractor nor its surviving members shall be relieved of their obligations to complete the Contract unless the City agrees to terminate the Contract because it determines that the Contractor is unable to satisfactorily execute the Contract.

- 12. OWNERSHIP OF THE WORK:** The Contractor agrees that the ownership of all studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM and other material prepared or collected by the Contractor, hereafter referred to as "instruments of professional service", shall become the property of the City as they are prepared and/or developed in the course of the Contract. The Contractor agrees to allow the City access to all "instruments of professional service" at any time. The Contractor shall not copyright any material originating under the Contract without prior written approval of the City. No publications or publicity of the work, in part or in total, shall be made without the express written agreement of the City, except that Contractor may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.

- 13. PROPRIETARY RIGHTS:** The Parties under the Contract hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Contract, all rights accruing from such discoveries or inventions shall be the sole property of the Contractor. The Contractor, however, agrees to and does hereby grant to the City an irrevocable, nonexclusive, non-transferable, and royalty-free license to the manufacture, use, and disposition of each such discovery or invention that may be developed as a part of the work under the Agreement.

- 14. PUBLIC RECORDS:** The Contractor understands that any and all records related to and acquired by

the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City. The Contractor shall identify all records that it considers to be trade secrets as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act and shall also identify all other records it considers to be exempt under the Act. It is not sufficient to merely state generally that the record is proprietary or a trade secret or is otherwise exempt. Particular records, pages or section which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

- 15. RECORDS RETENTION:** The Contractor agrees to retain, in its files, and to produce to the City—within the time periods requested—all books, documents, electronic data media (EDM), accounting records, and other records produced or acquired by the Contractor in the performance of this agreement which are related to the City, at any time during this Agreement and for a period of at least three (3) years after its completion or termination. In addition, if any audit, claim, or litigation is commenced before the expiration of that three (3) year period, the records shall be retained until all related audits, claims, or litigation are resolved. The Contractor further agrees that the City shall have access to all the above information for the purpose of reviewing and audit during the Agreement period and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the City if requested in the format in which the records were obtained, created, or maintained, such that their original use and purpose can be achieved. Contractor, sub-Contractors, or any representatives performing work related to the Agreement, are responsible to insure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage.

16. APPEARANCES:

- A. Hearings and Conferences.** The Contractor shall provide professional services required by the City and necessary for furtherance of any work covered under the Agreement. Professional services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its contractual services covered under the Agreement.

The Contractor shall perform any liaison that the City deems necessary for the furtherance of the work and participate in conferences with the City, at any reasonable time, concerning interpretation and evaluation of all aspects covered under the Agreement.

The Contractor further agrees to participate in meetings with the City and any other interested or affected participant, for the purpose of review or resolution of any conflicts pertaining to the Agreement.

The Contractor shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto in accordance with the Agreement.

- B. Appearance as Witness.** If and when required by the City, the Contractor, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related contract, on behalf of the City. The Contractor shall be equitably paid, to the extent permitted by law, for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Agreement.

- 17. APPENDICES:** The City may attach, to these specifications, appendices containing various forms

and typical sample sheets for guidance and assistance to the Contractor in the performance of the work. It is understood, however, that such forms and samples may be modified, altered, and augmented from time to time by the City as occasions may require. It is the responsibility of the Contractor to ensure that they have the latest versions applicable to the Contract.

18. EXTENSION OF TIME: The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by the Contractor for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Contract. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the City may decide. Time extensions shall be granted by amendment only for excusable delays, such as delays beyond the control of the Contractor and without the fault or negligence of the Contractor.

19. FAILURE TO COMPLY WITH TIME SCHEDULE: In the event the City is dissatisfied with the slow progress or incompetence in the performance of the scope of work as defined in the Request for Proposals, Attachment A, and the Contractor's Proposal, Attachment B (hereafter "the Work") in accordance with the schedule for completion of the various aspects of construction, the City shall give the Contractor written notice in which the City shall specify in detail the cause of dissatisfaction. Should the Contractor fail or refuse to remedy the matters complained of within five days after the written notice is received by the Contractor, the City shall have the right to take control of the Work and either make good the deficiencies of the Contractor itself or direct the activities of the Contractor in doing so, employing such additional help as the City deems advisable. In such events the City shall be entitled to collect from the Contractor any expenses in completing the Work.

The City may withhold liquidated damages at the rate specified in the Contractor's Proposal, Attachment B from the amount payable to the Contractor for each calendar day that the Contractor is in default after the time of completion stipulated in the Contract and Attachments. It is understood that the amount is approximately equal to the interest and other charges incurred by the City.

It is mutually understood and agreed to, that neither Party hereto shall be held responsible for delay in performing the work encompassed herein, when such delay is due to unforeseeable causes such as acts of God, or a public enemy, fire, strikes, floods, or legal acts of public authorities. In the event that any such causes for delay are of such magnitude as to prevent the complete performance of the Contract within two (2) years of the originally scheduled completion date, either Party may by written notice request to amend or terminate the Contract.

20. SETTLEMENTS OF MISUNDERSTANDINGS: To avoid misunderstandings and litigation, it is mutually agreed by all Parties that the City Engineer shall act as referee on all questions arising under the terms of the Contract and that the decision of the City Engineer in such cases shall be binding upon both Parties.

21. CITY'S OPTION TO TERMINATE: The Contract may be terminated in accordance with the following provisions, which are not exclusive:

1. Breach of Contract. The City may terminate this Contract due to a breach by Contractor. Termination for breach of Contract will be without further compensation to the Contractor.
2. Termination for Cause. The City may, upon written notice to the Contractor, terminate the Contract as of a date to be specified by the City if the Contractor fails to complete the designated work to the satisfaction of the City within the time schedule agreed upon. The

Contractor shall be compensated on the basis of the work performed and accepted by the City at the date of final acceptance of the Contract.

3. Termination for Convenience. At any time prior to completion of services specified under the Contract, the City may terminate the Contract for any reason by submitting written notice via certified or registered mail to the Contractor, not less than fifteen (15) days prior to the termination date, of its intention to do so. If the termination is for the City's convenience, payment to the Contractor will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made. However, if a notice of termination is given to a Contractor prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Contractor will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the City's approval. The Contractor shall make no claim for additional compensation against the City by reason of such termination.
4. Contract Disputes. In the event of a dispute between the parties to this agreement each party will continue to perform its obligations unless the Agreement is terminated in accordance with these terms.

22. ACKNOWLEDGEMENTS: Acknowledgment of the City's support must be included in any and all publications, renderings and project publicity, including audio/visual materials developed under this contract.

23. RESPONSIBILITY FOR SUPERVISION: The Contractor shall assume primary responsibility for general supervision of Contractor employees and any subcontractors for all work performed under the Contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Contract. The Contractor shall be responsible to the City for all acts or omissions of its subcontractors and any other person performing work under this Contract,

24. UTILITIES: Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the Contractor will counsel with the City and will enter into any necessary contacts and discussions with the affected owners regarding any requirement necessary for revisions of facilities or existing installations, both above and below ground. Any such installations must be completely and accurately exhibited on any detail sheets or plans. The Contractor shall inform the City, in writing, of any such contacts and the results thereof.

25. PUBLIC RELATIONS: Throughout the performance of the Contract, the Contractor will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Contractor shall conduct themselves with propriety. The Contractor agrees to inform property owners and/or tenants, in a timely manner, if there is need for entering upon private property as an agent of the City, in accordance with 19 V.S.A. § 35 and §.503, to accomplish the work under the Contract. The Contractor agrees that any work will be done with minimum damage to the property and disturbance to the owner. Upon request of the Contractor, the City shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Contractor is acting as an agent of the City.

- 26. INSPECTION OF WORK:** The City shall, at all times, have access to the Contractor's work for the purposes of inspection, accounting, and auditing, and the Contractor shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Contractor shall permit the City or representative for the City the opportunity to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the Contractor pursuant to the Contract.

Conferences, visits to a site, or an inspection of the work, may be held at the request of any involved party or by representatives of the City.

- 27. RESPONSIBILITY OF COST:** The Contractor shall furnish and pay the cost, including taxes (except tax exempt entities) and all applicable fees, of all the necessary materials and shall furnish and pay for full time on-site superintendence during any construction activity, labor, tools, equipment, and transportation, and perform all the Work required for the construction of all items listed and itemized under Attachments A and B and in strict accordance with the Contract Documents and any amendments thereto and any approved supplemental plans and specifications. The Contractor agrees to pay all claims for labor, materials, services and supplies and agrees to allow no such charge, including no mechanic's lien, to be fixed on the property of the City.

- 28. PAYMENT PROCEDURES:** The City shall pay or cause to be paid to the Contractor or the Contractor's legal representative payments in accordance with the Contract. When applicable, for the type of payment specified in the Contract, a progress report shall summarize actual costs and any earned portion of fixed fee. All payments will be made in reliance upon the accuracy of all representations made by the Contractor, whether in invoices, progress reports, emails, or other proof of work.

All invoices and correspondence shall indicate the applicable project name, project number and the Contract number. When relevant, the invoice shall further be broken down in detail between projects.

When applicable, for the type of payment specified in the Contract, expenses for meals and travel shall be limited to the current approved in-state rates, as determined by the State of Vermont's labor contract, and need not be receipted. All other expenses are subject to approval by the City and must be accompanied with documentation to substantiate their charges.

No approval given or payment made under an agreement, shall be conclusive evidence of the performance of said agreement, either wholly or in part thereof, and no payment shall be construed to be acceptance of defective work or improper materials.

The City agrees to pay the Contractor and the Contractor agrees to accept, as full compensation, for performance of all services rendered and expenses encompassed in conformance therewith, the fee specified in the Contract.

Upon completion of all Work and payment of the agreed upon fee, the Contract with its mutual obligations shall end.

- 29. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES:** The City may, upon written notice, require or agree to changes, or additions to or deletions from the originally contemplated scope of work.

The value of such changes, to the extent not reflected in other payments to the Contractor, shall be incorporated in an amendment and be determined by mutual agreement, by one or more of the following:

1. Fixed Price. By a price that is not subject to any adjustment on the basis of the Contractor's expenses experienced in performing the work. The Contractor is fully responsible for all costs and resulting profit or loss.
2. Rate Schedule. By unit prices designated in the Contract, or by unit prices covered under any subsequent contracts.
3. Actual Cost. By amounts determined on the basis of actual costs incurred, as distinguished from forecasted expenditures.

No changes, for which additional fee payment is claimed, shall be made unless pursuant to a written order from the City, and no claim for payment shall be valid unless so ordered.

The Contractor agrees to maintain complete and accurate records of all change work, in a form satisfactory to the City. The City reserves the right to audit the records of the Contractor related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Contract. When changes are so ordered, no additional work shall be performed by the Contractor until a Contract amendment has been fully executed, unless written notice to proceed is issued by the City. Any claim for extension of time that may be necessitated as a result of extra work or additional services and changes shall be given consideration and evaluated insofar as it directly relates to the change.

- 30. ACCESS:** The City shall provide the land and/or construction easements for the land upon which the Work under this Contract is to be done, and will, so far as is convenient, permit the Contractor to use as much of the land as is required for the erection of temporary construction facilities and storage of materials, together with the right of access to same, but beyond this, the Contractor shall provide at the Contractor's cost and expense any additional land required.
- 31. WARRANTY:** The Contractor guarantees all material and equipment furnished and all Work performed for a period of one (1) year from the date of substantial completion of the Contract (or one (1) year from final completion of the Contract for all work completed after substantial completion). The Contractor guarantees that the facility is free from defects due to faulty materials or workmanship and the Contractor shall make the necessary corrections or repairs to correct these defects as outlined further in Specification Section 01740.
- 32. LAWS:** The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work as specified in the Contract Documents. If the Contractor observes that the Contract Documents are at variation with any laws, ordinances, rules or regulations, the Contractor shall promptly notify the City in writing and any necessary changes shall be adjusted through the use of Contract Change Orders. The Contractor agrees to comply with all laws, rules and regulations that apply to related Work.
- 33. PERFORMANCE:** The actual performance of Work and superintendence shall be performed by the Contractor, but the City shall, at all times, have access to the premises for the purpose of observing or inspecting the Work performed by the Contractor.
- 34. CONFLICT OF INTEREST:** The Contractor shall disclose in writing to the City any actual or potential conflicts of interest or any appearance of a conflict of interest by the Contractor, its employees or agents, or its subcontractors, if any.

- 35. NO GIFTS OR GRATUITIES:** The Contractor shall not make any payment or gift or donation of substantial value to any elected official, officer, employee, or agent of the City during the term of this Contract.
- 36. RESPONSIBILITY FOR SUBCONTRACTOR:** The Contractor shall have full responsibility under this Contract for any subcontracts which the Contractor may let.
- 37. RELEASE:** The acceptance by the Contractor of final payment shall be a release to the City of all claims and all liability for all things done or furnished in connection with this Work and for every act and neglect of the City and others relating to or arising out of this Work. Any payment, however, final or otherwise, shall not release the Contractor or his sureties from any obligations under the Contract Documents or any performance or payment bond.
- 38. SUSPENSION OF WORK:** The City may suspend the work or any portion thereof for a period of not more than ninety days or such further time as agreed by the Contractor. The Contractor will be allowed an extension of contract time directly attributable to any suspension.
- 39. CONTRACT CHANGE ORDERS:** No changes or amendments of the Contract shall be effective unless documented in writing and signed by authorized representatives of the City and the Contractor. All changes affecting the Project's construction cost, length of time, or modifications of the terms or conditions of the Contract, must be authorized by means of a written Contract Change Order which is mutually agreed to by the City and Contractor. The Contract Change Order will include extra Work, Work for which quantities have been altered from those shown in the Bid Schedule, as well as decreases or increases in the quantities of installed units which are different from those shown in the Bid Schedule because of final measurements. All changes must be recorded on a Contract Change Order (which form is part of these Contract Documents) and fully executed before they can be included in a partial payment estimate. Changes for Work, quantities, and/or conditions will include any respective time adjustment, if justified. Time adjustments will require an updated Project Schedule with the Change Order.
- 40. SAFETY REQUIREMENTS:** The Contractor shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA) and any VOSHA (Vermont OSHA) Safety and Health requirements, including the provision and use of appropriate safety equipment and practices.
- The Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, equipment, vehicles, and methods, and for any damages, which may result from their failure or their improper construction, maintenance or operation.
- 41. AUDIT AND ACCESS TO RECORDS:** For all negotiated Contracts, the City, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor, which are pertinent to the Contract, for the purpose of making audits, examinations, excerpts and transcriptions. The Contractor shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- 42. WAIVER:** No waiver by City of any breach of this Agreement by the Contractor shall constitute a waiver of any other or subsequent breach by the Contractor, and no delay in enforcement of any breach shall be deemed a waiver of that breach.

ATTACHMENT C

CITY OF BURLINGTON

DRAFT

**CONTRACTOR
AGREEMENT**

This Contractor Agreement (“Agreement”) is entered into by and between the City of Burlington, Vermont (“the City”), and _____ (“Contractor”), a Vermont corporation located at .

Contractor and the City agree to the terms and conditions of this Agreement.

1. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “Agreement Documents”** means all the documents identified in section 4 of this Agreement.
- B. “Effective Date”** means the date on which this Agreement is approved and signed by the City, as shown on the signature page.
- C. “Party”** means the City or Contractor and “Parties” means the City and Contractor.
- D. “Project”** means the _____.
- E. “Work”** means the services described in section 5 of this Agreement, along with the specifications contained in the Agreement Documents as defined in section 4 below.

2. RECITALS

- A. Authority.** Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party’s obligations have been duly authorized.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.
- C. Purpose.** The City seeks to employ the Contractor to _____.

3. EFFECTIVE DATE, TERM, AND TERMINATION

- A. Effective Date.** This Agreement shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Agreement before the Effective Date

and shall have no obligation to pay Contractor for any performance or expense incurred before the Effective Date or after the expiration or termination of this Agreement.

B. Term. This Agreement and the Parties' respective performance shall commence on the Effective Date and expire on _____ or upon the satisfaction of the City, unless sooner terminated as provided herein.

C. Termination. This Agreement

4. AGREEMENT DOCUMENTS

The Agreement Documents are hereby adopted, incorporated by reference, and made part of this Agreement. The intention of the Agreement Documents is to establish the necessary terms, conditions, labor, materials, equipment, and other items necessary for the proper execution and completion of the Work to ensure the intended results.

The following documents constitute the Agreement Documents:

Attachment A: Request for Proposals dated _____
Attachment B: Contractor's Response to Request for Proposals dated _____
Attachment C: Burlington Contractor Conditions
Attachment E: Burlington Livable Wage Ordinance Certification
Attachment F: Burlington Outsourcing Ordinance Certification
Attachment G: Burlington Union Deterrence Ordinance Certification
Attachment H: Contractor's Certificate of Insurance

5. SCOPE OF WORK

The Contractor shall perform the services listed in Attachments A (Request for Proposals) and B (Contractor's Response to Request for Proposals).

6. PAYMENT FOR SERVICES

A. Amount. The City shall pay the Contractor for completion of the Work in accordance with Attachment B (Contractor's Response to Request for Proposals) [or as follows: _____]

Contractor agrees to accept this payment as full compensation for performance of all services and expenses incurred under this Agreement.

B. Payment Schedule. The City shall pay the Contractor in the manner and at such times as set forth in the Agreement Documents [or as follows: _____]. The City seeks to make payment within thirty days of receipt of an invoice and any backup documentation requested under section 6D below.

C. Maximum Limiting Amount. The total amount that may be paid to the Contractor for all services and expenses under this Agreement shall not exceed the maximum limiting amount of \$ _____. The City shall not be liable to Contractor for any amount exceeding the maximum limiting amount without duly authorized written approval.

- D. Invoice.** Contractor shall submit one copy of each invoice, including rates and a detailed breakdown by task for each individual providing services, and backup documentation for any equipment or other expenses to the following:

[Name, address, phone, email]

The City reserves the right to request supplemental information prior to payment. Contractor shall not be entitled to payment under this Agreement without providing sufficient backup documentation satisfactory to the City.

- E. Non-Appropriation.** The obligations of the City under this Agreement are subject to annual appropriation by the Burlington City Council. If no funds or insufficient funds are appropriated or budgeted to support continuation of payments due under this Agreement, the Agreement shall terminate automatically on the first day of the fiscal year for which funds have not been appropriated. The Parties understand and agree that the obligations of the City to make payments under this Agreement shall constitute a current expense of the City and shall not be construed to be a debt or a pledge of the credit of the City. Agreement. The decision whether or not to budget and appropriate funds during each fiscal year of the City is within the discretion of the Mayor and City Council of the City.

The City shall deliver written notice to Contractor as soon as practicable of any non-appropriation, and Agreement Contractor shall not be entitled to any payment or compensation of any kind for work performed after the City has delivered written notice of non-appropriation.

7. COMPLIANCE WITH LAWS

The Parties, and any subcontractors approved under this Agreement, shall comply with all applicable laws, statutes, ordinances, rules, regulations, and/or requirements of federal, state, and local governments and agencies thereof.

8. BINDING EFFECT AND CONTINUITY

This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective heirs, successors, representatives, and assigns. If a dispute arises between the Parties, each Party will continue to perform its obligations under this Agreement during the resolution of the dispute, until the Agreement is terminated in accordance with its terms.

9. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement or the Agreement Documents shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement

10. ENTIRE AGREEMENT

This Agreement, including the Agreement Documents, constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein or pursuant to section 10 below.

11. NO THIRD PARTY BENEFICIARIES

This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

12. ASSIGNMENT

Contractor shall not sublet or assign this Work, or any part of it, without the written consent of the City. If any subcontractor is approved, Contractor shall be responsible and liable for all acts or omissions of that subcontractor for any Work performed. If any subcontractor is approved, Contractor shall be responsible to ensure that the subcontractor is paid as agreed and that no lien is placed on any City property.

13. WAIVER

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

14. FORCE MAJEURE

Neither Party to this Agreement shall be liable to the other for any failure or delay of performance of any obligation under this Agreement to the extent the failure or delay is caused by acts or events beyond its reasonable control that render performance illegal or impossible ("Force Majeure"). To assert Force Majeure, the nonperforming party must prove that a) it made all reasonable efforts to remove, eliminate, or minimize the cause of delay or damage, b) diligently pursued performance of its obligations, c) substantially fulfilled all obligations that could be fulfilled, and d) timely notified the other party of the likelihood or actual occurrence of a Force Majeure event.

15. CHOICE OF LAW

Vermont law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision rendered null and void by operation of this provision shall not invalidate the remainder of this Agreement to the extent capable of execution.

16. JURISDICTION

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Vermont.

17. ARM'S LENGTH

This Agreement has been negotiated at arm's length, and any ambiguity in any of its terms or provisions shall be interpreted in accordance with the intent of the Parties and not against or in favor of either the City or Contractor.

18. SECTION HEADINGS

The section heading of this Agreement, including its Attachments, are for convenience of reference only and do not modify or restrict the terms of the Agreement.

— Signatures follow on the next page —

19. SIGNATURE

Persons signing for the Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect.

Contractor
(Name of Contractor)

By: _____

Date: _____

City of Burlington
Parks, Recreation & Waterfront

By: _____

Cindi Wight
Director of Parks, Recreation & Waterfront

Date: _____