

Chapin Spencer
PUBLIC WORKS DIRECTOR

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INVITATION FOR BIDS
Carbon Replacement – Main Wastewater Plant

Date of Issuance:	October 17, 2018
Issued by:	Burlington Department of Public Works, Water Resources Division
Due Date for Quotations:	Friday October 26, 2018
Issuing Point of Contact:	Matthew Dow 53 Lavalley Lane, Burlington, VT 05401 (802) 343-0326 mdow@burlingtonvt.gov

INTRODUCTION

The City of Burlington Department of Public Works is seeking bids for the project of carbon replacement in a 10,000 lb Calgon Carbon scrubber unit at the City's Main Wastewater Plant, to be complete prior to December 1, 2018.

GENERAL SCOPE OF WORK

The City is looking for the following tasks to be included in the proposal's scope of work:

1. Removing spent carbon from scrubber unit through a vacuum system.
2. Disposing of spent carbon.
3. Inspection of the carbon scrubber unit.
4. Providing 10,000 pounds of new carbon to refill the carbon scrubber unit.
5. Refill and level the carbon scrubber unit.
6. All services provided and work performed must be completed by December 1, 2018.
7. The total cost for all services provided and work performed must be less than \$20,000.

DEADLINE FOR RECEIPT OF BIDS

All replies and proposals in response to this Invitation for Bids must be received in a sealed envelope clearly marked “Burlington Main Wastewater Carbon 2018” to the address and point of contact no later than **2:00 p.m.** on the above due date at which time all submitted proposals will be publicly opened and recorded. Late proposals will not be accepted under any circumstances. Electronic proposals are preferred as long as they are received by the point of contact by the required deadline. It is the responsibility of the entity submitting replies and proposals to ensure that that the point of contact has received the completed proposal by the required deadline.

ANSWERS TO QUESTIONS AND REVISIONS TO REQUEST FOR PROPOSAL

Any revisions, addendums and answers to questions received at least three days before the due date will be sent to potential contractors who directly received this Invitation. In addition, revisions will be posted on the City’s RFP web page <http://burlingtonvt.gov/RFP/>. It is advised that contractors sign up for the GovDelivery notification so that they will be notified of any changes to the RFP page.

SITE VISIT

There will be no formal site visit. Contractors can call for an appointment to tour the areas through the above point of contact.

PARTNERSHIPS

Contractors may team up with other firms, local or otherwise, in order to provide the best possible proposal for ensuring quality and efficient completion of the project tasks. Any proposed partnership or use of subcontractors should be clearly identified in the Proposal.

BID FORMAT

Contractors are encouraged to be concise. All proposals must, at a minimum, include:

1. Completed bid form including prices for each item and signature by authorized representative for the firm.
2. Signed and notarized attachments D (Livable Wage certification) and E (Union Deterrence certification).
3. If firm has no history doing work for the City of Burlington, provide a brief description of your firm’s history and experience. If your firm intends to partner with another company, also provide pertinent information on the subcontractor.

BID EVALUATION

Bids will be reviewed and evaluated by City staff based on the information provided in the proposal. At this time, we are only interested in completing work that does not exceed a contract value of \$20,000 per year. Additional information may be requested prior to final selection. The selected contractor must be willing to enter into an agreement with the City in a form substantially similar to the Draft contract provided in attachment B.

CONTRACT REQUIREMENTS

Contractors are advised to review the Draft Contract (Attachment B), the Standard Conditions (Attachment C), the Livable Wage Ordinance (Attachment D), and the Union Deterrence Ordinance (Attachment E) in advance of submitting a proposal. The City of Burlington reserves the right to alter or amend any or all of these attachments, including the conditions of this Invitation for Bids.

INDEMNIFICATION

The selected contractor will act in an independent capacity and not as officers or employees of the City. The Contractor 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 chosen contractor's acts and or omission in the performance of the activities sought herein.

LIMITATIONS OF LIABILITY

The City assumes no responsibility and liability for costs incurred by parties responding to this Invitation for Bids or responding to any further requests for interviews, additional data, etc.

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 in the City's best interests, including selecting which projects it can afford to do at this point in time or in consideration of the proposed contractor's schedule. The City reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals.

OWNERSHIP OF DOCUMENTS

Proposals, plans, specifications, and other documents prepared and submitted under this Invitation for Bids or any agreement between the selected contractor and the City shall become the property of the City. Records shall be furnished to the City by the Contractor upon request at any time, however the Contractor may retain copies of the original documents.

COMPLIANCE WITH LAW

All proposals and work completed under a proposal must be performed in accordance with applicable rules, regulations, codes, and ordinances of local, state, and federal authorities. All such proposals and work completed must also be performed in accordance with the requirements of public utility corporations having jurisdiction over the work performed.

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 considered to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, shall be identified, as shall all other records considered to be exempt under the Act. It is not sufficient to merely state generally that the proposal 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.

ATTACHMENT A
Bid Form

Project: Carbon Replacement – Main Wastewater Plant

Contractor: _____

Address: _____

Contact: _____

Telephone/Email: _____

Estimated Start Date: _____

Estimated End Date: _____

Subcontractor(s): _____

ITEM	Unit	Total
Mob/Demob	Lump Sum	\$
Carbon Cleanout Labor	Lump Sum	\$
Carbon	Lump Sum	\$
Other (please specify)	Lump Sum	\$
Total Bid		\$

By signing this bid sheet, the Contractor agrees to abide by all specifications and conditions in these Bid Documents.

Signature

Name

Title

Date

ATTACHMENT B

CITY OF BURLINGTON CONSTRUCTION SERVICES CONTRACT Carbon Replacement, Main Wastewater Plant

This Construction Services Contract (“Contract”) is entered into by and between the City of Burlington (“City”) and _____ (“Contractor”), a Vermont corporation registered to do business in the State of Vermont with its principal place of business at _____. Contractor and the City agree to the terms and conditions of this Contract.

1. RECITALS

- A. Authority.** Authority to enter into this Contract exists in the City Charter. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- 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 Contract.
- C. Purpose.** The City seeks to employ the Contractor to remove and replace carbon from the carbon scrubber unit located in the City’s Main Wastewater Plant in Burlington, Vermont.

2. EFFECTIVE DATE AND TERM

- A. Effective Date.** This Contract shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Contract 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 Contract.
- B. Term.** This Contract and the Parties respective performance shall commence on the Effective Date and expire on December 1, 2018.
- C. Work Activities.** The Contractor shall complete the work on a day and time agreed upon by the Parties, but all work shall be complete prior to December 1, 2018.

3. DEFINITIONS

- A. “Effective Date”** means the date on which this Contract is approved and signed by the City, as shown on the signature page of this Contract.
- B. “Party”** means the City or Contractor and “Parties” means both the City and Contractor.

4. SCOPE OF WORK

The Contractor shall provide all services necessary to remove, dispose, and replace carbon in the carbon scrubbing unit at the City’s Main Wastewater Plant as set forth in the Invitation for Bids (Attachment A) and Contractor’s Scope of Work and Cost Proposal (Attachment B).

The City shall provide a crane, at its own expense, to allow for the replacement of carbon in the carbon scrubbing unit. All other services and equipment shall be supplied by Contractor.

If it becomes necessary to procure subcontractor services, the selection of subcontractor(s) shall be subject to the City's approval. All solicitations made by the Contractor for subcontractor services shall include a reference to applicable local, state, and federal law pertaining to non-discrimination in hiring and employment, the City's Livable Wage Ordinance, and the City's Union Deterrence Ordinance.

5. PAYMENT FOR SERVICES

- A. Contract Fee.** The City shall pay the Contractor payment at the rate specified in Contractor's Scope of Work and Cost Proposal (Attachment B). Contractor agreed to accept this payment as full compensation for performance of all services and expenses (including those of subcontractors, if any) under this Contract.
- B. Maximum Limiting Amount.** The total amount that may be paid to the Contractor for all services and expenses under this Contract 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.
- C. Invoice.** Contractor shall submit one copy of each invoice and backup documentation for expenses to Wastewater Facilities Manager Matthew Dow via mail or e-mail to the following:

Matthew Dow
Wastewater Facilities Manager
Department of Public Works
53 Lavalley Lane
Burlington, VT 05401
mdow@burlingtonvt.gov

Contractor shall not be entitled to payment under this Contract without providing an invoice and sufficient backup documentation for expenses as set forth in this §5.C.

- D. Costs for Crane.** In accordance with §4, the City will supply a crane for carbon installation on a date and for a specific duration agreed upon by the Parties. If Contractor requires use of the crane for any period in excess of the established duration, Contractor shall be solely responsible for all costs associated with additional crane usage for the project.

6. ATTACHMENTS

The following attachments are adopted, incorporated by reference, and made part of this Contract:

- A. Attachment A:** Invitation for Bids
- B. Attachment B:** Contractor's Scope of Work and Cost Proposal
- C. Attachment C:** Additional Contract Provisions
- D. Attachment D:** City's Livable Wage Certification

E. Attachment E: City's Union Deterrence Certification

7. ORDER OF PRECEDENT

If a provision in this Contract conflicts or is inconsistent with any attachment, then the Contract takes precedent. In addition, the Invitation for Bids, Additional Contract Provisions, and the City Ordinance Certifications shall prevail over any inconsistency with the Contractor's Scope of Work and Cost Proposal.

8. SIGNATURE PAGE

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.

The Parties hereto have executed this Contract

<p>CONTRACTOR</p> <p>By: _____</p> <p>Date: _____</p>
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<p>CITY OF BURLINGTON Department of Public Works</p> <p>By: _____</p> <p>Chapin Spencer Director of Public Works</p> <p>Date: _____</p>

ATTACHMENT C

BURLINGTON STANDARD CONTRACT CONDITIONS

1. **ABBREVIATIONS:** Wherever used, abbreviations may be used in place of a word or phrase and definitions may be used to interpret statements for the meaning of words phrases or expressions. The intent and meaning for abbreviations and definitions shall be interpreted as herein set forth:

AGC	Associated General Contractors of America
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
AWWA	American Water Works Association
CADD	Computer Aided Drafting and Design
CES	Contractor Engineering Services
CFR	Code of Federal Regulations
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EDM	Electronic Data Media
FSS	Federal Specifications and Standards
IBC	International Building Code
IPC	International Plumbing Code
NEC	National Electrical Code
SIR	Self Insured Retention
USC	United States Code
USEPA	United States Environmental Protection Agency
VOSHA	Vermont Occupational Safety and Health Act
VSA	Vermont Statutes Annotated
WEF	Water Environment Association

2. **INDEMNIFICATION:** The Contractor shall act in an independent capacity and not as officers or employees of the City. 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 negligent acts and/or omissions in the performance of this contract.
3. **RELATIONSHIP:** The Parties agree that the Contractor is an independent contractor. To that end, the Contractor shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The City shall provide the Contractor with no specific instructions or training in how to provide the required services, except to the extent required by law or regulation. The Contractor shall provide its own tools, materials or equipment. The Parties agree that neither the Contractor nor its Principal is an employee of the City or any of its departments, agencies, or related entities. The Parties also agree that neither the Contractor nor its Principal is entitled to any employee benefits from the City. Contractor understands and agrees that it and its Principal 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 Contract 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.

4. **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. Certified 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, agents or workers meet the minimum coverage and limits plus maintain current certificates of coverage for all subcontractors, agents or workers. All subcontractors must comply with the same insurance requirements as the Contractor.
- (ii) All coverage shall include adequate protection for activities involving hazardous materials.
- (iii) All work activities related to the agreement 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
- 5. Contractual Liability
- 6. Broad Form Property Damage
- 7. Medical Expenses
- 8. Collapse, Underground and Explosion Hazards

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.	Fire Damage (Any one fire)	\$ 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 agreement. 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

5. 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.

6. 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 identify, national origin, physical disability or veteran status.

The Contractor shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR Part 60). The Contractor shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulations 49 CFR § 21 through Appendix C, and Regulations under 23 CFR§710.405 (b). Accordingly, all subcontracts shall include reference to the above. The Contractor shall comply with all the requirements of Title 21, VSA, Chapter 5, Subchapter 6 and 7, relating to fair employment practices to the extent applicable. A similar provision shall be included in any and all subcontracts.

7. **CHILD SUPPORT PAYMENTS:** By signing the Contract, the Contractor certifies, as of the date of signing the Contract, that they are (a) 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.
8. **TAX REQUIREMENTS:** By signing the Agreement, the Contractor certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, he/she 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 Agreement
9. **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.
10. **PERSONNEL REQUIREMENTS AND CONDITIONS:** A Contractor shall employ only qualified personnel, for 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 Agreement.

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

1. Personnel on the payroll of the City 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 person 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 agreement 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.

11. **TRANSFERS, SUBLETTING, 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

agreement 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, are personal and shall not be transferred without written authorization of the City. Any authorized sub agreements shall contain all of the same provisions for and attached to the original Contract with the City.

- 12. CONTINUING OBLIGATIONS:** The Contractor agrees that if because of death 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. However, the City may terminate the Contract if it considers a death or incapacity of any members to be a loss of such magnitude that it would affect the firm's ability to satisfactorily execute the Contract.
- 13. 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 Contractors, hereafter referred to as "instruments of professional service", shall become the property of the City as they are prepared and/or developed during execution of the Contract. The Contractor agrees to allow 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 Contract 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.
- 14. 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 practice each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the Contract.
- 15. 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.
- 16. RECORDS RETENTION:** The Contractor agrees to retain, in its files, and to produce to the City—within the time periods requested—all books, documents, EDM, accounting records, and other evidence related to the City, at any time during this Contract and for a period of at least three (3) years after its termination. The Contractor further agrees that the City shall have access to all the above information for the purpose of reviewing and audit during the Contract period and anytime

within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the City if requested. Contractor, subcontractors, or any representatives performing work related to the Contract, 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.

17. 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 Contract. 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 Contract.

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 Contract.

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 Contract.

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

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 for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Contract.

18. CHANGES AND AMENDMENTS: 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.

19. 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.

20. 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.

21. SETTLEMENTS OF MISUNDERSTANDINGS: In order to prevent 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 this governing body in such

cases shall be binding upon both Parties.

In agreements subjecting costs to final audit, an administrative review regarding the audit will be sent to the Contractor. Any dispute arising from an administrative decision shall be appealed in writing within thirty (30) days of receipt.

Contractor may appeal any determination regarding the Contract by filing a notice of appeal by hand delivery or courier to the Local Project Manager. The notice of appeal shall specifically state the grounds of the protest. Within seven (7) calendar days of the notice of appeal the Contractor must file with the City a detailed statement of the grounds, legal authorities and facts, including all documents and evidentiary statements, in support of the appeal. Evidentiary statements, if any, shall be submitted under penalty of perjury. The Contractor shall have the burden of proving its appeal by the preponderance of the evidence. Failure to file a notice of appeal or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to appeal the evaluation or qualified process and decisions thereunder.

22. FAILURE TO COMPLY WITH TIME SCHEDULE: 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.

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

1. Breach of Contract. Administrative remedies - 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. In addition to its rights and options to terminate this Contract as provided herein, the City may, at any time prior to completion of services specified under the Contract, terminate the Contract by submitting written notice to a Contractor, within not less than fifteen (15) days prior to the termination date, via certified or registered mail, 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.

- 24. 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.
- 25. RESPONSIBILITY FOR SUPERVISION:** The Contractor shall assume primary responsibility for general supervision of Contractor employees and his/her or their 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.
- 26. INDEPENDENCE:** The Contractor shall act in an independent capacity and not as officers or employees of the City.
- 27. 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, plus achieve 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.
- 28. PUBLIC RELATIONS:** Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, 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 VSA Title 19 § 35 and §503, in order to accomplish the work under the Contract. The Contractor agrees that any work will be done with minimum damage to the land 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.
- 29. 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.
- 30. RETURN OF MATERIALS:** Contractor agrees that at the expiration or termination of this Contract, it shall return to City all materials provided to it during its engagement on behalf of City.
- 31. PLANS RECORDS AND AVAILABLE DATA:** The City agrees to make available, at no charge, for the Contractor's use all available data related to the Contract including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.
- 32. DESIGN STANDARDS:** Unless otherwise specifically provided for in the Contract, or directed in

writing, Contractor services, studies or designs, that include or make reference to plans, specifications, special provisions, computations, estimates, or other data necessary for construction of a designed facility, shall be in conformance with applicable portions of the following specifications, manuals, codes or regulations, including supplements to or revisions thereof, adopted and in effect prior to award of the Contract:

1. VTRANS'S latest edition of the Standard Specifications for Construction.
2. VTRANS'S Bridge Design Manual.
3. All applicable AASHTO roadway, traffic, bridge, bicycle and pedestrian policies, guides and manuals.
4. VTRANS'S Manual on Survey.
5. VTRANS'S Right-of-Way Manual.
6. The Highway Capacity Manual - Special Report 209.
7. The ANSI/AASHTO/AWS D-1.5, Bridge Welding code.
8. The MUTCD and Vermont Supplement requirements.
9. The Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals
10. Other City directives and guidelines current at the time of the Agreement and as may be issued by the City during the progress of the design.

In case of any conflict with the guidelines referenced, the Contract is responsible to identify and follow any course of direction provided by the City.

33. REVIEWS AND ACCEPTANCES: All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the Contractor, shall be subject to review and endorsement by the City.

Approval for any inspections or sequences of progress of work shall be documented by letters, memoranda or other appropriate written means.

A frequency for formal reviews shall be set forth in the Contract. Informal reviews, conducted by the City will be performed as deemed necessary. The Contractor shall respond to all official comments regardless of their source. The Contractor shall supply the CITY with written copies of all correspondence relating to formal and informal reviews.

No acceptance shall relieve a Contractor of their professional obligation to correct any defects or errors in their work at their own expense.

34. BINDING NATURE AND JURISDICTION: This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their successors or heirs and representatives, and assigns. This Contract shall be governed by Vermont law, and the Contractor expressly agrees to submit to the jurisdiction of the courts

of the State of Vermont.

- 35. 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, the progress report shall summarize actual costs and any earned portion of fixed fee.

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 type of fee specified in the Contract.

Upon completion of all services covered under the Contract and payment of the agreed upon fee, the Contract with its mutual obligations shall expire.

- 36. PAYMENT FOR ADDITIONS OR DELETIONS:** The City may, upon written notice, and without invalidating the Contract, require any changes to, additions to, or deletions from, the originally contemplated extent of the work, prior to completion of the Contract by means of an amendment to the original Contract. Any adjustments of this nature shall be executed under the appropriate fee established in the Contract, based on the adjusted quantity of work, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such addition or deletion.

- 37. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES:** The City may, upon written notice, and without invalidating the Contract, require changes resulting from revision or abandonment of work already performed by the Contractor or changes in the 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 shall be valid unless so ordered.

The Contractor agrees to maintain complete and accurate records, in a form satisfactory to the City for all time devoted directly to same by Contractor employees. 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, which 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.

ATTACHMENT D

Certification of Compliance with the City of Burlington's Livable Wage Ordinance

(TO BE SUBMITTED WITH BID)

I, _____, on behalf of _____ ("the Contractor") in connection with a contract for _____ services that we provide to the City, hereby certify under oath that the Contractor (and any subcontractors under this contract) is and will remain in compliance with the City of Burlington's Livable Wage Ordinance, B.C.O. 21-80 et seq., and that:

1. as a condition of entering into this contract or grant, we confirm that all covered employees as defined by Burlington's Livable Wage Ordinance (including the covered employees of subcontractors) shall be paid a livable wage (as determined, or adjusted, annually by the City of Burlington's chief administrative officer) and provided appropriate time off for the term of the contract;
2. a notice regarding the applicability of the Livable Wage Ordinance shall be posted in the workplace(s) or other location(s) where covered employees work;
3. we will provide verification of an employee's compensation, produce payroll or health insurance enrollment records or provide other relevant documentation (including that of any subcontractor), as deemed necessary by the chief administrative officer, within ten (10) business days from receipt of a request by the City;
4. we will cooperate in any investigation conducted by the City of Burlington's City Attorney's Office pursuant to this ordinance; and
5. we will not retaliate (nor allow any subcontractor to retaliate) against an employee or other person because an employee has exercised rights or the person has cooperated in an investigation conducted pursuant to this ordinance.

Dated at _____, Vermont this _____ day of _____, 2018.

By: _____
Duly Authorized Agent for Contractor

Subscribed and sworn to before me: _____
Notary

A copy of the City's Livable Wage Ordinance follows this certification.

NOTE: This ordinance only applies for contracts over \$15,000.

ARTICLE VI. LIVABLE WAGES

21-80 Findings and purpose.

In enacting this article, the city council states the following findings and purposes:

- (a) Income from full-time work should be sufficient to meet an individual's basic needs;
- (b) The City of Burlington is committed to ensuring that its employees have an opportunity for a decent quality of life and are compensated such that they are not dependent on public assistance to meet their basic needs;
- (c) The City of Burlington is committed, through its contracts with vendors and provision of financial assistance, to encourage the private sector to pay its employees a livable wage and contribute to employee health care benefits;
- (d) The creation of jobs that pay livable wages promotes the prosperity and general welfare of the City of Burlington and its residents, increases consumer spending with local businesses, improves the economic welfare and security of affected employees and reduces expenditures for public assistance;
- (e) It is the intention of the city council in passing this article to provide a minimum level of compensation for employees of the City of Burlington and employees of entities that enter into service contracts or receive financial assistance from the City of Burlington.

(Ord. of 11-19-01; Ord. of 10-21-13)

21-81 Definitions.

As used in this article, the following terms shall be defined as follows:

- (a) *Contractor or vendor* is a person or entity that has a service contract with the City of Burlington where the total amount of the service contract or service contracts exceeds fifteen thousand dollars (\$15,000.00) for any twelve (12) month period, including any subcontractors of such contractor or vendor.
- (b) *Grantee* is a person or entity that is the recipient of financial assistance from the City of Burlington in the form of grants, including any contractors or subgrantees of the grantee, that exceed fifteen thousand dollars (\$15,000.00) for any twelve (12) month period.
- (c) *Covered employer* means the City of Burlington, a contractor or vendor or a grantee as defined above. The primary contractor, vendor, or grantee shall be responsible for the compliance of each of its subcontractors (or of each subgrantee) that is a covered employer.
- (d) *Covered employee* means an "employee" as defined below, who is employed by a "covered employer," subject to the following:
 - (1) An employee who is employed by a contractor or vendor is a "covered employee" during the period of time he or she expends on furnishing services under a service contract with the

City of Burlington, notwithstanding that the employee may be a temporary or seasonal employee;

- (2) An employee who is employed by a grantee who expends at least half of his or her time on activities funded by the City of Burlington is a "covered employee."
- (e) *Designated accountability monitor* shall mean a nonprofit corporation which has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and that is independent of the parties it is monitoring.
- (f) *Employee* means a person who is employed on a full-time or part-time regular basis. In addition, commencing with the next fiscal year, a seasonal or temporary employee of the City of Burlington who works ten (10) or more hours per week and has been employed by the City of Burlington for a period of four (4) years shall be considered a covered employee commencing in the fifth year of employment. "Employee" shall not refer to volunteers working without pay or for a nominal stipend, persons working in an approved apprenticeship program, persons who are hired for a prescribed period of six (6) months or less to fulfill the requirements to obtain a professional license as an attorney, persons who are hired through youth employment programs or student workers or interns participating in established educational internship programs.
- (g) *Employer-assisted health care* means health care benefits provided by employers for employees (or employees and their dependents) at the employer's cost or at an employer contribution towards the purchase of such health care benefits, provided that the employer cost or contribution consists of at least one dollar and twenty cents (\$1.20) per hour. (Said amount shall be adjusted every two (2) years for inflation, by the chief administrative officer of the city.)
- (h) *Livable wage* has the meaning set forth in Section 21-82.
- (i) *Retaliation* shall mean the denial of any right guaranteed under this article, and any threat, discipline, discharge, demotion, suspension, reduction of hours, or any other adverse action against an employee for exercising any right guaranteed under this article. Retaliation shall also include coercion, intimidation, threat, harassment, or interference in any manner with any investigation, proceeding, or hearing under this article.
- (j) *Service contract* means a contract primarily for the furnishing of services to the City of Burlington (as opposed to the purchasing or leasing of goods or property). A contract involving the furnishing of financial products, insurance products, or software, even if that contract also includes some support or other services related to the provision of the products, shall not be considered a service contract.

(Ord. of 11-19-01; Ord. of 10-21-13)

21-82 Livable wages required. (FY 17 update)

- (a) Every covered employer shall pay each and every covered employee at least a livable wage no less than:
- (1) For a covered employer that provides employer assisted health care, the livable wage shall be at least thirteen dollars and ninety-five cents (\$13.94) per hour on the effective date of the amendments to this article.

(2) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least fifteen dollars and eighty-three cents (\$15.83) per hour on the effective date of the amendments to this article.

(3) Covered employees whose wage compensation consists of more or other than hourly wages, including, but not limited to, tips, commissions, flat fees or bonuses, shall be paid so that the total of all wage compensation will at least equal the livable wage as established under this article.

(b) The amount of the livable wage established in this section shall be adjusted by the chief administrative officer of the city as of July 1 of each year based upon a report of the Joint Fiscal Office of the State of Vermont that describes the basic needs budget for a single person but utilizes a model of two (2) adults residing in a two (2) bedroom living unit in an urban area with the moderate cost food plan. Should there be no such report from the Joint Fiscal Office, the chief administrative officer shall obtain and utilize a basic needs budget that applies a similar methodology. The livable wage rates derived from utilizing a model of two (2) adults residing in a two (2) bedroom living unit in an urban area with a moderate cost food plan shall not become effective until rates meet or exceed the 2010 posted livable wage rates. Prior to May 1 preceding any such adjustment and prior to May 1 of each calendar year thereafter, the chief administrative officer will provide public notice of this adjustment by posting a written notice in a prominent place in City Hall by sending written notice to the city council and, in the case of covered employers that have requested individual notice and provided contact information to the chief administrative officer, by notice to each such covered employer. However, once a livable wage is applied to an individual employee, no reduction in that employee's pay rate is permissible due to this annual adjustment.

(c) Covered employers shall provide at least twelve (12) compensated days off per year for full-time covered employees, and a proportionate amount for part-time covered employees, for sick leave, vacation, personal, or combined time off leave.

(Ord. of 11-19-01; Ord. of 5-2-11; Ord. of 6-13-11; Ord. of 10-21-13)

21-83 Applicability.

(a) This article shall apply to any service contract or grant, as provided by this article that is awarded or entered into after the effective date of the article. After the effective date of the article, entering into any agreement or an extension, renewal or amendment of any contract or grant as defined herein shall be subject to compliance with this article.

(b) The requirements of this article shall apply during the term of any service contract subject to the article. Covered employers who receive grants shall comply with this article during the period of time the funds awarded by the City of Burlington are being expended by the covered employer.

(Ord. of 11-19-01; Ord. of 10-21-13)

21-84 Enforcement.

(a) Each service contract or grant covered by this article shall contain provisions requiring that the covered employer or grantee submit a written certification, under oath, during each year during the term of the service contract or grant, that the covered employer or grantee (including all of its

subcontractors and subgrantees, if any) is in compliance with this article. The failure of a contract to contain such provisions does not excuse a covered employer from its obligations under this article. The covered employer shall agree to post a notice regarding the applicability of this section in any workplace or other location where employees or other persons contracted for employment are working. The covered employer shall agree to provide payroll records or other documentation for itself and any subcontractors or subgrantees, as deemed necessary by the chief administrative officer of the City of Burlington, within ten (10) business days from receipt of the City of Burlington's request.

- (b) The chief administrative officer of the City of Burlington may require that a covered employer submit proof of compliance with this article at any time, including but not limited to:
 - (1) Verification of an individual employee's compensation;
 - (2) Production of payroll, health insurance enrollment records, or other relevant documentation;
or
 - (3) Evidence of proper posting of notice.

If a covered employer is not able to provide that information within ten (10) business days of the request, the chief administrative officer may turn the matter over to the city attorney's office for further enforcement proceedings.

- (c) The City of Burlington shall appoint a designated accountability monitor that shall have the authority:
 - (1) To inform and educate employees of all applicable provisions of this article and other applicable laws, codes, and regulations;
 - (2) To create a telephonic and electronic accountability system under this article that shall be available at all times to receive complaints under this article;
 - (3) To establish and implement a system for processing employees' complaints under this article, including a system for investigating complaints and determining their initial credibility;
and
 - (4) To refer credible complaints to the city attorney's office for potential enforcement action under this article.

The designated accountability monitor shall forward to the City of Burlington all credible complaints of violations within ten (10) days of their receipt.

- (d) Any covered employee who believes his or her covered employer is not complying with this article may file a complaint in writing with the city attorney's office within one (1) year after the alleged violation. The city attorney's office shall conduct an investigation of the complaint, during which it may require from the covered employer evidence such as may be required to determine whether the covered employer has been compliant, and shall make a finding of compliance or noncompliance within a reasonable time after receiving the complaint. Prior to ordering any penalty provided in subsection (e), (f), or (g) of this section, the city attorney's office shall give notice to the covered employer. The covered employer may request a hearing within thirty (30) days of receipt of such notice. The hearing shall be conducted by a hearing

officer appointed by the city attorney's office, who shall affirm or reverse the finding or the penalty based upon evidence presented by the city attorney's office and the covered employer.

- (e) The City of Burlington shall have the right to modify, terminate and/or seek specific performance of any contract or grant with a covered employer from any court of competent jurisdiction, if the covered employer has not complied with this article.
- (f) Any covered employer who violates this article may be barred from receiving a contract or grant from the city for a period up to two (2) years from the date of the finding of violation.
- (g) A violation of this article shall be a civil offense subject to a civil penalty of from two hundred dollars (\$200.00) to five hundred dollars (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any covered employee is not compensated as required by this article shall constitute a separate violation.
- (h) If a complaint is received that implicates any City of Burlington employee in a possible violation of this article, that complaint will be handled through the City's personnel procedures, not through the process outlined in this article.
- (i) Any covered employee aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against the covered employer within two (2) years after discovery of the alleged violation. The court may award any covered employee who files suit pursuant to this section, as to the relevant period of time, the following:
 - (1) The difference between the livable wage required under this article and the amount actually paid to the covered employee;
 - (2) Equitable payment for any compensated days off that were unlawfully denied or were not properly compensated;
 - (3) Liquidated damages in an amount equal to the amount of back wages and/or compensated days off unlawfully withheld or fifty dollars (\$50.00) for each employee or person whose rights under this article were violated for each day that the violation occurred or continued, whichever is greater;
 - (4) Reinstatement in employment and/or injunctive relief; and
 - (5) Reasonable attorneys' fees and costs.
- (j) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article. No person shall engage in retaliation against an employee or threaten to do so because such employee has exercised rights or is planning to exercise rights protected under this article or has cooperated in any investigation conducted pursuant to this article.

(Ord. of 11-19-01; Ord. of 2-17-04; Ord. of 5-2-11; Ord. of 10-21-13)

21-85 Other provisions.

- (a) No covered employer shall reduce the compensation, wages, fringe benefits or leave available to any covered employee in order to pay the livable wage required by this article. Any action in violation of this subsection shall be deemed a violation of this article subject to the remedies of Section 21-84.
- (b) No covered employer with a current contract, as of the effective date of this provision, with the City of Burlington for the use of property located at the Burlington International Airport may reduce, during the term of that contract, the wages of a covered employee below the livable wage as a result of amendments to this article.
- (c) Where pursuant to a contract for services with the city, the contractor or subcontractor incurs a contractual obligation to pay its employees certain wage rates, in no case except as stated in subsection (d) of this section, shall the wage rates paid pursuant to that contract be less than the minimum livable wage paid pursuant to this article.
- (d) Notwithstanding subsection (c) of this section, where employees are represented by a bargaining unit or labor union pursuant to rights conferred by state or federal law and a collective bargaining labor agreement is in effect governing the terms and conditions of employment of those employees, this chapter shall not apply to those employees, and the collective bargaining labor agreement shall control.
- (e) Covered employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the Earned Income Tax Credit under federal and state law.
- (f) The chief administrative officer of the city shall have the authority to promulgate rules as necessary to administer the provisions of this article, which shall become effective upon approval by the city council.

(Ord. of 11-19-01; Ord. of 10-21-13)

21-86 Exemptions.

An exemption from any requirement of this article may be requested for a period not to exceed two (2) years:

- (a) By a covered employer where payment of the livable wage would cause substantial economic hardship; and
- (b) By the City of Burlington where application of this article to a particular contract or grant is found to violate specific state or federal statutory, regulatory or constitutional provisions or where granting the exemption would be in the best interests of the City.

A covered employer or grantee granted an exemption under this section may reapply for an exemption upon the expiration of the exemption. Requests for exemption may be granted by majority vote of the city council. All requests for exemption shall be submitted to the chief administrative officer. The finance committee of the City of Burlington shall first consider such request and make a recommendation to the city council. The decision of the city council shall be final.

(Ord. of 11-19-01; Ord. of 10-21-13)

21-87 Severability.

.....
If any part or parts or application of any part of this article is held invalid, such holding shall not affect the validity of the remaining parts of this article.

(Ord. of 11-19-01; Ord. of 10-21-13)

21-88 Annual reporting.

.....
On or before April 15 of each year, the city attorney's office shall submit a report to the city council that provides the following information:

- (a) A list of all covered employers broken down by department;
- (b) A list of all covered employers whose service contract did not contain the language required by this article; and
- (c) All complaints filed and investigated by the city attorney's office and the results of such investigation.

(Ord. of 10-21-13)

21-89 Effective date.

.....
The amendments to this article shall take effect on January 1, 2014, and shall not be retroactively applied.

(Ord. of 10-21-13)

ATTACHMENT E

Certification of Compliance with the City of Burlington's Union Deterrence Ordinance

(TO BE SUBMITTED WITH BID)

I, _____, on behalf of _____ (Contractor) and in connection with _____ (City contract/project/grant), hereby certify under oath that _____ (Contractor) has not advised the conduct of any illegal activity, and it does not currently, nor will it over the life of the contract advertise or provide union deterrence services in violation of the City's union deterrence ordinance.

Dated at _____, Vermont this ____ day of _____, 2018.

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary

A copy of the City's Union Deterrence Ordinance follows this certification

BURLINGTON'S UNION DETERRENCE ORDINANCE

ARTICLE VIII. UNION DETERRENCE

21-100 Policy.

It is the policy of the City of Burlington to limit letting contracts to organizations that provide union deterrence services to other companies.

(Ord. of 3-27-06/4-26-06)

21-101 Definitions.

- (a) *Contractor or vendor.* A person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods), including any subcontractors of such contractor or vendor.
- (b) *Government funded project.* Any contract for services which involves any City funds and the total amount of the contract is fifteen thousand dollars (\$15,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.
- (c) *Union deterrence services.* Services provided by a contractor, subcontractor or vendor that are not restricted to advice concerning what activities by an employer are prohibited and permitted by applicable laws and regulations, but extend beyond such legal advice to encouraging an employer to do any of the following:
 - (1) Hold captive audience, (i.e., mandatory) meetings with employees encouraging employees to vote against the union;
 - (2) Have supervisors force workers to meet individually with them to discuss the union;
 - (3) Imply to employees, whether through written or oral communication, that their employer may have to shut down or lay people off if the union wins the election;
 - (4) Discipline or fire workers for union activity;
 - (5) Train managers on how to dissuade employees from supporting the union.
- (d) *Substantial portion of income.* For the purposes of this article, substantial portion of income shall mean greater than ten (10) percent of annual gross revenues or one hundred thousand dollars (\$100,000.00), whichever is less.

(Ord. of 3-27-06/4-26-06)

21-102 Implementation.

- (a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who
 - (1) Advises or has advised an employer to conduct any illegal activity in its dealings with a

union.

(2) Advertises union deterrence services as specialty services;

(3) Earns a substantial portion of its income by providing union deterrence services to other companies in order to defeat union organizing efforts.

(b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that it has not advised the conduct of any illegal activity, it does not currently, nor will it over the life of the contract provide union deterrence services in violation of this article.

(Ord. of 3-27-06/4-26-06)

21-103 Enforcement.

(a) Any contractor, subcontractor or vendor who files false or materially misleading information in connection with an application, certification or request for information pursuant to the provisions of this article or provided union deterrence services during the life of a contract for a government funded project shall be deemed to be in violation of this article.

(b) The City of Burlington shall have the right to modify, terminate and or seek specific performance of any contract for a government funded project if the contractor, subcontractor or vendor has not complied with this article.(Ord. of 3-27-06/4-26-06)

21-104—21-110 Reserved.
