

**REQUEST FOR PROPOSALS
FOR CONSTRUCTION INSPECTION SERVICES
FOR CY '19 SIDEWALK PROGRAM**

Date of Issuance:	February 6, 2019
Issued by:	City of Burlington, Department of Public Works
Mandatory site visit:	None
Due Date for Questions:	February 15, 2019 by 5 p.m. (please submit via email) (Responses will be posted on February 20, 2019 by 5 p.m.)
Due Date for Proposals:	February 27, 2019 by 12 p.m.
Issuing Point of Contact:	Susan Molzon, Senior Public Works Engineer, Dept. of Public Works 645 Pine Street, Burlington, VT 05401 802-540-0557 smolzon@burlingtonvt.gov

I. INTRODUCTION

The City of Burlington Department of Public Works (City) is soliciting Construction Inspection Services for the above referenced project. Work includes, but is not limited to, the construction inspection services stated in the Scope of Work below.

The City has appointed Susan Molzon, Senior Public Works Engineer, as the Municipal Project Manager (MPM) to act as its representative for project development. In the event the MPM is not available, the appropriate contact person is Laura Wheelock, Senior Public Works Engineer.

This project is managed locally. The City provides the necessary oversight of the construction phase. This oversight includes inspection and sampling/testing of construction materials. This RFP seeks bids in order for it to select and hire a consultant that can provide these construction inspection services to the City.

Final bid documents for this project are available for viewing at Burlington Public Works, 645 Pine Street, Burlington. The Office is open Monday through Friday, 8:00 AM to 4:30 PM. Call the MPM at (802) 540-0557 to schedule an alternate day if these times are not possible. These documents are also available for viewing at Works in Progress, Farrell Street, South Burlington. An electronic version of the plans is available. To request an electronic copy, contact Susan Molzon, MPM, at smolzon@burlingtonvt.gov. The selected Construction and Inspection individual or firm will be provided a copy of the Contract Documents and the Construction Plans at no charge.

All Work will be accomplished in accordance with the following:

- Manual of Uniform Traffic Control Devices
- VTrans Standard Specifications for Construction 2011
- VTrans General Special Provisions for 2011 Standard Specifications
- VTrans Supplemental Specifications
- Project Special Provisions

II. SCOPE OF WORK

The consultant hired to perform these services should be qualified to perform a variety of inspection, record keeping and construction engineering activities including, but not limited to:

Task 1: Administration

1. Maintain communication with the MPM on a regular basis.
2. Coordinate with the Municipality and the Construction Contractor(s).
3. Review and have a thorough understanding of contract plans, specifications, estimates and contract special provisions.
4. Coordinate, schedule and oversee the pre-construction conference. Coordinate, schedule and attend the Final Inspection. Attend all other job related meetings.
5. Ensure the contractor contacts Dig-Safe.
6. Preparation of Daily Reports, including quantities. Construction Inspector shall perform reconciliation of completed quantities per pay item with Contractor on a weekly basis. Construction Inspector shall assess progress for each item and notify the Municipality and Design Team in advance of work being completed for any items which are anticipated to exceed the estimated amounts as shown on the Bid Form.
7. Maintain a photographic record of the progress of construction, annotating such photos to indicate their content and context including date. This photographic record must be available for reference by the MPM and Municipal representatives.
8. Accompany the MPM and Municipal representatives on visits to the project.
9. Assist MPM with outreach with properties that are impacted throughout the construction activities to update and coordinate for proximate adjacent work that will impact said property. Document and appropriately respond to questions and concerns from the public. Many questions from the public are related to work status and schedule. These questions would be best answered by the selected consultant. The consultant must keep a written log of all questions received by the public. The log must include the contact information, the question, the date of the question, and the date of the response to the question. If the consultant cannot provide a response within 24 hours, the municipality shall be provided with the details of the question or concern.
10. Participate once every two weeks in regularly scheduled Construction Status meetings with the Contractor, MPM and Municipal representatives.
11. Report immediately any unusual occurrences and all accidents occurring within the project limits to the MPM or designee.
12. Calculation and verification of the final contract quantities.

13. Review and submit to the City any suggestions or requests made by the contractor to change or modify any requirements of the Plans or Contract Documents.
14. Receive certificates, computations and reference materials submitted by the Contractor. Maintain files on the project site of all items submitted by the contractor and of work done on behalf of the Municipality.
15. Prepare a Contractors progress payment estimate on a bi-weekly basis.
16. Issue a Certificate of Substantial Completion at the appropriate time.
17. Provide certification to the Municipality that this project was constructed as designed, subject to appropriate and necessary revisions during construction, in conformance with all project specifications and that all necessary contract provisions were fully complied with.

Task 2: Construction Inspection

1. Maintain a presence on the project during times when contractor and subcontractor activities are underway.
2. Check that the contractor is in compliance with all construction contract requirements, City of Burlington permits and ordinances; property rights agreements; erosion and sediment control; and storm water management plan; state permits, regulations and statutes; and federal regulations and statutes; and exercise the engineer's authority as provided in the contract documents and report immediately any deviations to the MPM.
3. Inspect and approve material sources and waste, borrow and staging areas, with due regard to approval/disapproval from the MPM and the City of Burlington representative(s).
4. Track utility relocation and plotting of final facility locations on the final as-built plans (if any).
5. Erosion control monitoring in accordance with applicable permits.
6. Review and verify traffic control activities.
7. Development of final as-built plans by marking up a set of contract plans.
8. Check that completed work complies with the plans and specifications and is true to line and grade.
9. Make an inspection of work completed at such time as the contractor may claim substantial completion, with a contractor's representative, and issue a list of items to be corrected or completed.

Task 3: Materials and Equipment Inspection and Testing

1. Check that materials and equipment are fabricated and tested in accordance with contract documents, in advance of installation. Review the test reports and certificates and forward to the MPM for decision on acceptability.

2. The selected Construction and Inspection Consultant is responsible for the required acceptance testing by an independent qualified laboratory. This includes hiring an independent qualified laboratory to perform any testing required within the contract documents.

The Construction Inspection field personnel will be expected to wear personal protective equipment, including appropriate headgear, footwear, eyewear, and reflectorized vest when on the project site.

The Construction Inspection contractor will be expected to provide and have on the project all necessary equipment, tools, and supplies needed to carry out the required duties.

Please note that a field office will not be provided.

Consultants may team up with other firms, local or otherwise, in order to provide whatever diversity is deemed necessary for completing the project tasks.

The project was advertised on **January 31, 2019**. The award of the construction contract is anticipated to be the week of **March 11, 2019**. The construction is scheduled to start after **April 15, 2019** and be completed by **November 1, 2019**. The Construction Inspector Consultant should plan on being on-site during construction of the project to the extent necessary to certify, on completion of the project, that the project was built as designed, subject to appropriate and necessary revisions during construction, in conformance with all project specifications and that all necessary contract provisions were fully complied with.

The Construction Inspector Consultant will be the primary contact person representing the City of Burlington on the project. The consultant will be responsible for contacting the Design Team and the MPM to resolve any design related issues that may arise during construction.

III. RESPONSE FORMAT

Responses to this RFP shall consist of a Technical Proposal and a Cost Proposal being submitted electronically in separate PDF files or in separate sealed envelopes.

A. A Technical Proposal consisting of:

1. A cover letter expressing the consultant's interest in working with the City of Burlington including an identification of the principal individuals that will provide the requested services.
2. A description of the general approach to be taken toward completion of the project and an explanation of any variances to the proposed scope of work as outlined in this RFP.
3. A scope of work that includes detailed steps to be taken, any products or deliverables resulting from each task and a summary of estimated labor hours by task.
4. A list of individuals that will be committed to this project and their professional qualifications, certificates, and related safety training. The names and qualifications of any sub-consultants shall be included in this list. The individual's names, titles and expected duties should be included. Any personnel not specified in the proposal will require the approval of the MPM prior to utilization or invoicing.
5. Describe experience similar construction projects and familiarity with the VTrans Standard Specifications for Construction.

6. A proposed means of providing the equipment and supplies required to carry out the prescribed duties.
7. Demonstration of success on similar projects, including a brief project description and a contact name and address for reference.
8. The Technical proposal shall be clear and concise, not exceeding twenty-five (25) 8 ½” x 11” pages for items 1 through 7 above. Information better suited to a larger paper size should be folded to an 8 ½” x 11” size.
9. Signed and Notarized Certifications of Compliance with the City of Burlington’s Livable Wage Ordinance, Outsourcing Ordinance and Union Deterrence Ordinance.

B. The Cost Proposal shall consist of:

1. A composite schedule by task of direct labor hours, direct labor cost per class of labor, overhead rate, and fee for the project. If the use of sub-consultants is proposed, a separate schedule must be provided for each. Bidders shall provide on-site construction inspection services at 40 hours/week during construction operations (this includes routine duties such as daily reports, job meetings, preparation of minutes, etc.).
2. Cost proposals shall include estimates of reimbursable expenses including mileage, sampling and testing expense.
3. A company billing rate sheet including standard billing rates, overtime rates and policies, and expense costs.

IV. CONTRACT PERIOD, AMOUNT AND PAYMENTS

The Construction Inspection Consultant is anticipated to be selected the week of March 11, 2019.

V. CONSULTANT SELECTION

A committee that includes officials from the City of Burlington will make the consultant selection. The selection committee will review and evaluate all proposals based on the following criteria:

<u>CRITERIA</u>	<u>WEIGHT</u>
1. Understanding the Scope of Work	20%
2. Qualification of Firm with Similar Projects	10%
3. Experience of Assigned Staff	15%
4. Reasonableness of Labor Hour Schedule	10%
5. Proven record of successful completion of similar projects	15%
6. Cost	30%

Once the Technical Proposals are discussed and ranked, the cost proposals will then be opened and reviewed and scored for consistency with, and in light of, the evaluation of the Technical Proposals. The selection committee may elect to interview consultants prior to final selection. The City of Burlington reserves the right

to seek clarification of any proposal submitted and to select the proposal considered to best promote the public interest.

The proposals will be evaluated and awarded based on the personnel presented in the Technical Proposal. Should the awarded consultant propose any substitutions to the project personnel they must submit a letter to the Municipality requesting approval of such a change. This said, the Municipality reserves the right to negotiate with any qualified source, to reject any and all proposals received as a result of this solicitation or to cancel this RFP in part or in its entirety if it is in the best interests of the Municipality to do so. The Municipality reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals. This RFP in no way obligates the Municipality to award a contract. The Municipality assumes no responsibility and liability for costs incurred by parties responding to this RFP or responding to any further requests for interviews, additional data, etc., prior to the issuance of the contract. The cost of preparing, submitting and presenting is the sole expense of the submitting entity.

VI. Contracting

The Consultant, 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, 26 Terrace Street, Montpelier, VT 05609-1104. The telephone number is (802) 828-2386. The contract will not be executed until the Consultant is registered with the Secretary of State's Office. The successful Consultant will be expected to execute sub-agreements for each sub-consultant named in the proposal upon award of this contract.

Prior to beginning any work, the Consultant shall obtain Insurance Coverage in accordance with the Specifications for Contractor Services as amended by the Special Conditions that are included in the Appendix of this RFP. The certificate of insurance coverage shall be documented on forms acceptable to the City.

GENERAL COMPLIANCE WITH LAWS

The Consultant 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).

Applicable City of Burlington Ordinances. (available online at <http://www.codepublishing.com/vt/burlington/>)

- a) City Livable Wages Ordinance. For any contractor that has a service contract(s) 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) City Outsourcing Ordinance. For any contract for services which involves any city funds and the total amount of the contract is fifty thousand dollars (\$50,000.00) or more.
- c) City Union Deterrence Ordinance. For 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.

VII. SUBMISSIONS

Consultants interested in this project should submit one (1) electric or printed copy of their Proposals to:

Susan Molzon, P.E., Senior Public Works Engineer
Burlington Department of Public Works
645 Pine Street
Burlington, VT 05401
Email: SMolzon@burlingtonvt.gov

Technical and Cost Proposals must be submitted in separate PDF files or separate sealed envelopes with the following information clearly identified:

Name of prime consultant
File contents (Technical Proposal or Cost Proposal)
Project name & number

Due date for questions is 5:00 pm on February 15, 2019. Any revisions, addendums and answers to questions received by the due date for questions will be sent to bidders who received this Invitation. In addition, revisions will be posted on the City's RFP web page <http://burlingtonvt.gov/RFP/>. It is advised that bidders sign up for the GovDelivery notification so that they will be notified of any changes to the RFP page.

All proposals must be received by the MPM **no later than 12:00 PM on February 27, 2019**. Proposals and/or modifications received after this time will not be accepted. No facsimile-machine produced proposals will be accepted. The expense of preparing and submitting the proposal is the sole responsibility of the consultant. The City of Burlington reserves the right to reject any or all proposals received, to negotiate with any qualified source, or to cancel in part or in its entirety this RFP if it is in the best interest of the City of Burlington. This solicitation in no way obligates the City of Burlington to award a contract.

SITE VISIT: There is no scheduled prebid site visit planned at this time. Consultants may schedule a visit through the above point of contact.

VIII. PUBLIC RECORDS

Any and all records submitted to the Municipality, 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 Municipality. 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.

APPENDIX

Draft Agreement

Burlington Standard Conditions for Consultant Services

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

Burlington's Livable Wage Ordinance

Certification of Compliance with the City of Burlington's Outsourcing Ordinance

Burlington's Outsourcing Ordinance

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

Burlington's Union Deterrence Ordinance

DRAFT AGREEMENT
CITY OF BURLINGTON
CONSULTANT CONTRACT
CY'19 Sidewalk Program

This Consultant Contract (“Contract”) is entered into by and between the City of Burlington, Vermont (“the City”) and _____ (“Consultant”), a Vermont corporation, with its principal place of business in _____. Consultant 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, clearances, 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 Consultant to provide resident engineering services for the Project.

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 Consultant 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 31, 2019, unless sooner terminated as provided herein.
- C. Work Activities.** The Consultant shall commence the Work on the Effective Date and complete all Work required under this Contract by December 31, 2019.

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 Consultant and “Parties” means the City and Consultant.
- C. “Project”** means the CY’19 Sidewalk Program, which includes sidewalk removal and replacement, curb adjustment and replacement, and sidewalk offsets along portions of the City identified by the City.
- D. “Work”** means the consultation activities described in §5 of this Contract along with the specifications identified in the attachments to this Contract.

4. SCOPE OF WORK

The Consultant shall provide all services necessary to ensure the successful completion of the Work as set forth in the Standard Contract Conditions (Attachment A), Request for Proposals issued by the City (Attachment B), and Consultant Proposal (Attachment C).

Should it become necessary for Consultant to procure sub consultant services, the selection of sub-consultant(s) shall be subject to the City's approval. All solicitations made by the Consultant for sub-consultant services shall include a reference to applicable local, state, and federal law pertaining to 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 Consultant at the rate specified in the Consultant's Scope of Services contained within the Consultant's Proposal, attached herein as Attachment C. Consultant agrees to accept this payment as full compensation for performance of all services and expenses (including those of sub-consultant, if any) under this Contract.
- B. Maximum Limiting Amount.** The total amount that may be paid to the Consultant for all services and expenses under this Contract shall not exceed the maximum limiting amount of _____ . The City shall not be liable to Consultant for any amount exceeding the maximum limiting amount without duly authorized written approval.
- C. Invoice.** Consultant shall submit one copy of each invoice and backup documentation for expenses by mail to the following:

Susan Molzon
Senior Public Works Engineer
Department of Public Works
645 Pine Street
Burlington, VT 05401
smolzon@burlingtonvt.gov

Consultant shall not be entitled to payment under this Contract without providing an invoice and sufficient backup documentation for expenses as set forth in this §6.C.

6. ATTACHMENTS

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

- A. ATTACHMENT A:** Burlington Standard Contract Conditions for Consultant Services
- B. ATTACHMENT B:** Request for Proposals
- C. ATTACHMENT C:** Consultant Proposal
- D. ATTACHMENT D:** Livable Wage Ordinance Form
- E. ATTACHMENT E:** Outsourcing Ordinance Form

F. ATTACHMENT F: Union Deterrence Ordinance Form

G. ATTACHMENT G: Consultant Insurance Certificate

7. ORDER OF PRECEDENT

If a conflict or inconsistency exists between the Contract and any attachments, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. This Contract
2. Attachment A: Burlington Standard Contract Conditions
3. The other provisions of this contract
4. Attachment B: Request for Proposals
5. Attachment C: Consultant 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.

<p>Consultant</p> <p>By: _____</p> <p>Date: _____</p>
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<p>City of Burlington, Vermont Department of Public Works</p> <p>By: _____</p> <p style="text-align: center;">Chapin Spencer Public Works Director</p> <p>Date: _____</p>

BURLINGTON CONSULTANT 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 Consultants 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	Consultant 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. **RELATIONSHIP:** The Consultant is an independent consultant and shall act in an independent capacity and not as officers or employees of the City. To that end, the Consultant shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Consultant shall provide its own tools, materials or equipment. The Parties agree that neither the Consultant nor its Principal is entitled to any employee benefits from the City. Consultant 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 Consultant 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 Consultant 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.

3. **INDEMNIFICATION:** The Consultant 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 Consultant'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 Consultant in writing that a claim to which the indemnification provision may apply has been filed. Consultant shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.
4. **INSURANCE:** Prior to beginning any work, the Consultant 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 Agreement. 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 Agreement 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 shall name the City as an additional insured for the possible liabilities resulting from the Consultant's actions or omissions. It is agreed that the liability insurance furnished by the Consultant is primary and non-contributory for all the additional insured.

The Consultant is responsible to verify and confirm in writing to the City that: (i) all sub-consultants must comply with the same insurance requirements as the Consultant; (ii) all coverage shall include adequate protection for activities involving hazardous materials; and (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 Consultant for the Consultant'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 Consultant, sub-consultants, agents or workers, it is the Consultant'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 Consultants' 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.	Legal/Liability	\$ 50,000
7.	Med. Expense (Any one person)	\$ 5,000

- B. WORKERS' COMPENSATION:** With respect to all operations performed, the Consultant shall carry workers' compensation insurance in accordance with the laws of the State of Vermont and ensure that all sub-consultants carry the same workers' compensation insurance for all work performed by them under this Agreement. 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 policy limit; \$100,000 each employee

C. PROFESSIONAL LIABILITY INSURANCE:

1. General. The Consultant shall carry architects/engineers professional liability insurance covering errors and omissions made during their performance of contractual duties with the following minimum limits:
 - (a) \$3,000,000 - Annual Aggregate
 - (b) \$2,000,000 - Per Occurrence
2. Deductibles. The Consultant is responsible for any and all deductibles.
3. Coverage. Prior to performing any work, the Consultant shall provide evidence of professional liability insurance coverage defined under this section. In addition, the Consultant shall maintain continuous professional liability coverage for the period of the Agreement and for a period of five years following substantial completion of construction.

- D. AUTOMOBILE LIABILITY:** The Consultant 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.

E. VALUABLE PAPERS AND RECORDS INSURANCE: The Consultant shall carry valuable papers insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other information or data relating to the work, whether supplied by the City or developed by the Consultant, sub-consultant, worker, or agent, in the event of loss, impairment, or destruction. Such coverage shall remain in force until the final plans as well as all related materials have been delivered by the consultant to, and accepted by, the City. Unless otherwise provided, Valuable Papers and Records Insurance shall provide coverage on an “individual occurrence” basis with limits in the amount of one hundred and fifty thousand dollars (\$150,000) when the insured items are in the Consultant’s possession, and in the amount of forty thousand dollars (\$40,000) regardless of the physical location of the insured items.

F. UMBRELLA LIABILITY:

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

5. GENERAL COMPLIANCE WITH LAWS: The Consultant 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 Agreement 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 Agreement is unenforceable or invalid, that provision shall be deemed severed from the Agreement, 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 Agreement.

6. CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY: During performance of the Agreement, the Consultant 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 Consultant 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 Consultant 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 Consultant 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. **TAX REQUIREMENTS:** By signing the Agreement, the Consultant 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
8. **REGISTRATION:** The Consultant 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 Agreement is effective. This registration must be complete prior to Agreement execution.
9. **PERSONNEL REQUIREMENTS AND CONDITIONS:** The Consultant 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 Agreement, the Consultant shall not employ:

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

The Consultant warrants that no company or person has been employed or retained, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that no company or person has been paid or has an agreement with the Consultant to be paid, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the City shall have the right to annul the Agreement, without liability to the City, and to regain all costs incurred by the City in the performance of the Agreement.

The City reserves the right to require removal of any person employed by a Consultant, from work related to the Agreement, 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 Agreement.

10. **TRANSFERS, SUBLETTING, ETC:** The Consultant shall not assign, sublet, or transfer any interest in the work, covered by this Agreement, without prior written consent of the City and further, if any sub-consultant 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 Consultant of responsibility for the performance of that portion of the work so transferred. The form of the sub-consultant's agreement shall be as developed by the Consultant and approved by the City. The Consultant shall ensure that insurance coverage exists for any operations to be performed by any sub-consultant as specified in the insurance requirements section of this Agreement.

The services of the Consultant, to be performed under the Agreement, 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 Agreement with the City.

- 11. CONTINUING OBLIGATIONS:** The Consultant agrees that if because of death or other occurrences, it becomes impossible to effectively perform its services in compliance with the Agreement, neither the Consultant nor its surviving members shall be relieved of their obligations to complete the Agreement. However, the City may terminate the Agreement 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 Agreement.
- 12. OWNERSHIP OF THE WORK:** The Consultant 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 Consultant, 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 Agreement. The Consultant agrees to allow access to all "instruments of professional service" at any time. The Consultant shall not copyright any material originating under the Agreement without prior written approval of the City. No publications or publicity of the work, in part or in total, shall be made without the Agreement of the City, except that Consultant 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 Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Agreement, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. The Consultant, 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 Agreement.
- 14. PUBLIC RECORDS:** The Consultant 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 Consultant 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 Consultant 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 Agreement and for a period of at least three (3) years after its termination. The Consultant 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. Consultant, sub-consultants, 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related contract, on behalf of the City. The Consultant shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Agreement.

- 17. CHANGES AND AMENDMENTS:** No changes or amendments of the Agreement shall

be effective unless documented in writing and signed by authorized representatives of the City and the Consultant.

18. **APPENDICES:** The City may attach, to these specifications, appendices containing various forms and typical sample sheets for guidance and assistance to the Consultant 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 Consultant to ensure that they have the latest versions applicable to the Agreement.
19. **EXTENSION OF TIME:** The Consultant agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by the Consultant for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Agreement. 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 Consultant and without the fault or negligence of the Consultant.
20. **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 Agreement within two (2) years of the originally scheduled completion date, either Party may by written notice request to amend or terminate the Agreement.
21. **CITY'S OPTION TO TERMINATE:** The Agreement may be terminated in accordance with the following provisions, which are not exclusive:
 1. Breach of Agreement. Administrative remedies - the City may terminate this Agreement due to a breach by Consultant. Termination for breach of Agreement will be without further compensation to the Consultant.
 2. Termination for Cause. The City may, upon written notice to the Consultant, terminate the Agreement, as of a date to be specified by the City, if the Consultant fails to complete the designated work to the satisfaction of the City, within the time schedule agreed upon. The Consultant shall be compensated on the basis of the work performed and accepted by the City at the date of final acceptance of the Agreement.
 3. Termination for Convenience. In addition to its rights and options to terminate this Agreement as provided herein, the City may, at any time prior to completion of services specified under the Agreement, terminate the Agreement by submitting written notice to a Consultant, 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 Consultant 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 Consultant prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Consultant 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 Consultant shall make no claim for additional compensation against the City by reason of such termination.

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 Agreement.
23. **RESPONSIBILITY FOR SUPERVISION:** The Consultant shall assume primary responsibility for general supervision of Consultant employees and his/her or their sub-consultants for all work performed under the Agreement and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Agreement.
24. **INDEPENDENCE:** The Consultant shall act in an independent capacity and not as officers or employees of the City.
25. **UTILITIES:** Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the Consultant 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 Consultant shall inform the City, in writing, of any such contacts and the results thereof.
26. **PUBLIC RELATIONS:** Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the Consultant will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Consultant shall conduct themselves with propriety. The Consultant 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 Agreement. The Consultant agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the Consultant, the City shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Consultant is acting as an agent of the City.
27. **INSPECTION OF WORK:** The City shall, at all times, have access to the Consultant's

work for the purposes of inspection, accounting, and auditing, and the Consultant shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Consultant 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 Consultant pursuant to the Agreement.

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.

- 28. RETURN OF MATERIALS:** Consultant agrees that at the expiration or termination of this Agreement, it shall return to City all materials provided to it during its engagement on behalf of City.
- 29. PLANS RECORDS AND AVAILABLE DATA:** The City agrees to make available, at no charge, for the Consultant's use all available data related to the Agreement 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.
- 30. DESIGN STANDARDS:** Unless otherwise specifically provided for in the Agreement, or directed in writing, Consultant services, studies or designs, that include or make reference to plans, specifications, special provisions, computations, estimates, or other data shall be in conformance with applicable City, state, and federal specifications, manuals, codes or regulations, including supplements to or revisions thereof, adopted prior to or during the duration of this Agreement. In case of any conflict with the guidelines referenced, the Consultant is responsible to identify and follow any course of direction provided by the City.
- 31. REVIEWS AND ACCEPTANCES:** All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the Consultant, 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 Agreement. Informal reviews, conducted by the City will be performed as deemed necessary. The Consultant shall respond to all official comments regardless of their source. The Consultant shall supply the City with written copies of all correspondence relating to formal and informal reviews.

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

- 32. BINDING NATURE AND JURISDICTION:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors or heirs and representatives, and assigns. This Agreement shall be governed by Vermont law, and the Consultant expressly agrees

to submit to the jurisdiction of the courts of the State of Vermont.

- 33. PAYMENT PROCEDURES:** The City shall pay, or cause to be paid to the Consultant or the Consultant's legal representative, payments in accordance with the Agreement. When applicable, for the type of payment specified in the Agreement, 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 Agreement number. When relevant, the invoice shall further be broken down in detail between projects.

When applicable, for the type of payment specified in the Agreement, 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 Consultant and the Consultant 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 Agreement.

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

- 34. PAYMENT FOR ADDITIONS OR DELETIONS:** The City may, upon written notice, and without invalidating the Agreement, require any changes to, additions to, or deletions from, the originally contemplated extent of the work, prior to completion of the Agreement by means of an amendment to the original Agreement. Any adjustments of this nature shall be executed under the appropriate fee established in the Agreement, 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.

- 35. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES:** The City may, upon written notice, and without invalidating the Agreement, require changes resulting from revision or abandonment of work already performed by the Consultant or changes in the scope of work.

The value of such changes, to the extent not reflected in other payments to the Consultant, shall be incorporated in an amendment and be determined by mutual agreement.

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

the records of the Consultant related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Agreement. When changes are so ordered, no additional work shall be performed by the Consultant until an Agreement 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.

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.

Date: _____

By: _____
Contractor

Subscribed and sworn to before me: _____
Notary

A copy of the Ordinance follows this Certification.

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

ARTICLE VI. LIVABLE WAGES¹

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 19 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 (**\$14.52**) 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 (**\$16.20**) 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)

Certification of Compliance with the City of Burlington’s Outsourcing Ordinance
(TO BE SUBMITTED WITH BID)

I, _____, on behalf of
_____ (Contractor) and in connection with the
_____ [project], hereby certify under oath that
(1) Contractor shall comply with the City of Burlington’s Outsourcing Ordinance (Ordinance §§
21-90 – 21-93); (2) as a condition of entering into this contract or grant, Contractor confirms that
the services provided under the above-referenced contract will be performed in the United States
or Canada.

Dated this _____ day of _____, 2019.

By:

Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary

A copy of the Ordinance follows this Certification.

NOTE: This ordinance only applies for contracts over \$50,000.

BURLINGTON'S OUTSOURCING ORDINANCE

ARTICLE VII. OUTSOURCING

21-90 Policy.

It is the policy of the City of Burlington to let service contracts to contractors, subcontractors and vendors who perform work in the United States.

(Ord. of 11-21-05/12-21-05)

21-91 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 fifty thousand dollars (\$50,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.
- (c) *Outsourcing.* The assigning or reassigning, directly, or indirectly through subcontracting, of services under a government funded project to workers performing the work outside of the United States.

(Ord. of 11-21-05/12-21-05)

21-92 Implementation.

- (a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who is outsourcing, or causing the work to be performed outside of the United States or Canada.
- (b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that the services provided under the contract will be performed in the United States or Canada.

(Ord. of 11-21-05/12-21-05)

21-93 Exemption.

An exemption from requirements of this article may be authorized by the chief administrative officer based upon a determination that the services to be performed for the government funded project are not available in the United States or Canada at a reasonable cost. Any such exemption

decision by the chief administrative officer shall be reported to the board of finance in writing within five (5) days. The board of finance may, if it should vote to do so, override the exemption decision if such vote occurs within fourteen (14) days of the date of the chief administrative officer's communication to such board.

(Ord. of 11-21-05/12-21-05)

21-94 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 outsources work on a government funded project shall be deemed to be in violation of this article.
- (b) A violation of this article shall be a civil offense subject to a civil penalty of from one hundred dollars (\$100.00) to five hundred (\$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 violation of any provision of this article shall continue shall constitute a separate violation.
- (c) 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 11-21-05/12-21-05)

21-95—21-99 Reserved.

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 this _____ day of _____, 2019.

By:

Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary

A copy of the Ordinance follows this Certification.

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

**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.
