

AGREEMENT
(BAH Revision as of 3/30/10)

THIS AGREEMENT is made as of June 2, 2010, by and between **CITY OF BURLINGTON, VERMONT**, a municipal corporation organized under the laws of the State of Vermont, acting by and through **BURLINGTON ELECTRIC DEPARTMENT** (hereinafter referred to as **City** or **BED**), and **KPMG LLP.**, a Delaware registered limited liability partnership doing business in the State of Vermont with a place of business in Burlington VT, (hereinafter referred to as "**Contractor**"),

RECITALS:

- A. WHEREAS, in compliance with 24 V.S.A. App. §3-156 and 24 V.S.A. §§1683, 1684, the City is required to have annual audits performed by independent public accounting firms for all city departments and areas and have audit reports generated;
- B. WHEREAS, on February 9, 2010, the City published a Request for Proposals (RFP) (Attached) to present the opportunity for qualified firms to bid on the audit of the financial statements of the City, said bid to cover annual examinations of the financial statements of all the entities and areas listed in this RFP for Fiscal Year ending June 30, 2010 through Fiscal Year ending June 30, 2014 (five fiscal years);
- C. WHEREAS, based on the evaluation criteria process set forth in the February 9, 2010 RFP, BED selected Contractor, on the basis of its Audit Proposal (Attached) to provide the products and services set forth in the RFP with regard to the Burlington Electric Department and the Joseph C. McNeil Generating Station;

NOW, THEREFORE, in consideration of the fees and mutual covenants contained herein, and intending to be legally bound hereby, the Parties agree as follows:

Contractor's Responsibilities

1. Contractor agrees to perform the auditor services for Fiscal Years ending June 30, 2010 – 2014 as set forth in the RFP, Section Cost Proposal, posting dated March 5, 2010 including all attachments, unless such services are expressly excluded by this Agreement. Such responsibility does not extend to matters that might arise during any later periods for which Contractor is not engaged as auditor.
2. Contractor agrees to provide such services pursuant to the terms and conditions set forth in said RFP, Section I, including all terms and conditions within all attachments, unless said terms and conditions are expressly excluded by this Agreement. Such services, terms and conditions are hereby incorporated by reference into this Agreement.

3.

Contractor shall provide and adhere to include, but are not limited to, the services and terms and conditions stated in the Contractor's engagement letter for the relevant fiscal year and in the following provisions in the RFP, Cost Proposal, and pertinent RFP attachments: Scope of Audit, Auditing Standards, Comprehensive Annual Financial Report, Single Audit, Additional Detailed Reports and Other Considerations, Auditor's Responsibilities under Vermont State Statutes, Management Discussion & Analysis, Management Letters, Notes and Disclosures, As Needed Accounting and Audit-Related Services, Offer of Gratuities, Inspection of Work Performed, Exemption of Records, Accounting System, Compliance with Laws and Regulations, Staffing, Lead Role, City Approval Rights over Subcontractors and Subcontractor Payments. In the event that there is a conflict between any services, terms and conditions of the Contractor's engagement letter and any services, terms and conditions of this Agreement, the services, terms and conditions of this Agreement shall control. The immediately preceding sentence notwithstanding, if there is any conflict between the parties as to the RFP's Sec. II, Part VI, "Rights of Department", N., and/or the RFP's Sec. II, Part VII Contract Provisions [now] "4. Examination of Records", and/or the "performance of other duties as assigned" as referenced in Sec. 5, below, the engagement letter's Dispute Resolution provision will apply.

4.

In addition to the services, terms and conditions set forth in the RFP, Contractor agrees to provide the additional services, take the audit approach, and perform the contract under the general terms and conditions set forth in its Audit Proposal, submitted March 5, 2010. In the event that there is a conflict between the services, terms and conditions stated in the RFP and those stated in Contractor's Audit Proposal, the RFP shall prevail and apply.

5.

Contractor agrees that it shall coordinate its efforts with BED. Contractor agrees that it shall provide all the financial statements, reports, and letters listed on page 2 of the BED Audit RFP, in accordance with the timelines defined in this same section, directly to the CFO and General Manager of BED, the BED's Commissioners, the City's Chief Administrative Officer (CAO), and then the City Council's Board of Finance. Contractor agrees that the management letter shall be presented to the CFO of BED, BED Electric Commission and the Board of Finance for review as set forth in Section 7 (Terms and Dates of Performance).

The Parties acknowledge that the City Charter §155 provides for the Board of Finance to act as the City's Board of Audit. This provision makes the Board of Finance directly responsible for the appointment, compensation, retention, and oversight of the work of any independent accountants engaged for the purpose of performing independent audit services and preparing or issuing an independent audit report. All accountants thus engaged report directly to the Board of Finance.

The Parties acknowledge that it is the responsibility of the Board of Finance:

- to maintain a point of contact and provide a direct and separate line of communication between City Council and the independent auditors;
- to meet with the independent auditors to review the audited financial statement and auditor's report on such matters as the quality and depth of management and compliance;
- to recommend appropriate action to be taken by BED and/or other City Officials to implement recommendations contained in the audit report;
- to follow-up, as necessary, to ensure that approved recommendations are promptly implemented; and
- to perform other duties as assigned by City Council.

City's Responsibilities

6. BED agrees to develop financial statements and notes; thereafter, Contractor agrees to produce on request the final published financial statements. BED agrees it is responsible for making all management decisions, will appoint a competent employee to oversee work performed by Contractor, will evaluate the adequacy of any results provided by Contractor, and will establish controls and monitoring of all services provided by Contractor. BED will arrange for office space, equipment and access to the BED's online financial system, as determined and approved by BED.

In its sole and absolute discretion, BED will make appropriate staff available to provide assistance to Contractor. Such assistance may include coordinating the audit field work, identifying locations of required records and documentation, preparing and/or obtaining listings of account balances/transactions, providing reasonable detailed analysis and reconciliation of various accounts being audited and other such tasks which will serve to speed the conduct of services.

Term & Dates of Performance

7. Performance by Contractor shall commence by June 14, 2010. Performance shall be consistent with BED's annual audit workplan, with the schedule below providing key dates. The Contractor will provide drafts of the audit reports to the CFO and General Manager of BED, the City's CAO and the City's Chief Accountant for review prior to issuance. The Contractor shall provide BED with interim and final finished products in accordance with the schedule provided below, or as updated in the annual audit workplan. Contractor shall provide BED management and the City officials with audit work reviews on an as needed or as requested basis; the Parties agree that such review discussions may be continued possibly into March of the subsequent fiscal year.

The Parties agree that the following are the key dates in connection with the annual audits, management letters, and meetings with the Board of Finance to be performed under this contract. Key dates will be adjusted and set each year by BED and the City in its annual audit work-plan. Additional meetings between Contractor and the Board of Finance may be set by the Board as it deems necessary.

	<u>Annually</u>
BED to present its audit work-plan to CAO and Board of Finance	April 19
Interim work to be completed	May 15
Final field work to begin	August 1
Financial Statements to be finalized	September 30
Final Management Letter	September 30
Review with Board of Finance - within 30 days of finalizing Management Letter	

Compensation

8. BED agrees to pay Contractor for the fiscal years ending June 30 as follows: \$71,000 for FY 2010; \$74,250 for FY 2011; \$78,000 for FY 2012; \$82,000 for FY 2013; and \$86,500 for FY 2014. The time and manner of payment are as follows: Progress payments will be made on the basis of work completed during the course of the audit. Interim billings shall cover a work period of not less than thirty days.

Termination & Damages

9. In the event Contractor fails to fulfill any of the terms or conditions of this Agreement in the time set, BED shall have the right to terminate the Agreement and award a new contract to another Vendor. In the event this Agreement is so terminated, Contractor shall be responsible for damages and for additional costs incurred in advertising, reviewing, and awarding the contract, including any additional cost of providing the services and products required and reasonable attorneys' fees.

Insurance

10. The contractor shall agree to provide and maintain the following types and amounts of insurance for the term of this contract. This insurance shall be obtained from an insurer having an A.M. Best Insurance Rating of at least A-, financial size category VII or greater. [www.ambest.com].

a. Commercial General Liability Coverage:

Commercial General Liability Insurance including but not limited to Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations Liability and Contractual Liability with limits of, at a minimum, \$1,000,000 Combined Single Limit for each occurrence.

Contractor must list the City as Additional Insured on their Commercial General Liability Policy.

b. **Commercial Auto Coverage:**

Commercial Auto Liability Insurance covering all Owned & Hired and Non-Owned vehicles, with limits of, at a minimum, \$1,000,000 Combined Single Limit for each occurrence.

c. **Workers' Compensation & Employers Liability Insurance:**

Statutory Worker's Compensation Insurance and Employers Liability with limits of, at a minimum, \$1,000,000 for any one occurrence.

d. **Property Insurance**

All risk property insurance on a full replacement cost basis for all of Contractor's real and personal property and personal property of others in the Contractor's care custody or control which is located on or in any of the City's premises.

e. **Professional Liability Insurance:** (Errors and Omissions Coverage)

Professional Liability Insurance Coverage for \$3,000,000 Each Occurrence and \$3,000,000 annual aggregate.

f. **Certificates of Insurance**

Contractor shall provide BED with a certificate of insurance for coverages set forth above which shall not be subject to cancellation without at least thirty (30) days advance written notice to BED. Such evidence of insurance shall be received at BED before the commencement of work, or Purchase Order and/or Contract is awarded, whichever is sooner, and such insurance shall be maintained throughout the duration of awarded contract. Forward certificate of insurance to Burlington Electric Department, 585 Pine Street, Burlington, VT 05401, Attention: Risk Management.

g. **Subcontractor's Insurance**

Subcontractors must comply with the same insurance requirements as Contractor's.

Independent Contractor

11. Contractor warrants that it is not an employee of the City but is an independent contractor, solely responsible for performing the audit. Contractor warrants that it does not exclusively perform work for the City and is not treated by the City as an employee for income or employment taxation for undertaking this activity.

Conflict of Interest

12. Contractor agrees that it will comply fully with and be bound by the applicable provisions of state and local law related to conflicts of interest, including but not limited to City Charter § 133. Contractor agrees that it will be familiar with these laws and agrees to immediately notify City if it becomes aware of any fact that does or may constitute a violation of these provisions. Contractor, by the execution of this contract, certifies that it does not know of any facts that constitute a violation of any conflict of interest law as of the date of execution.

Livable Wage

13. Contractor agrees to comply with the City of Burlington's livable wage ordinance, Code of Ordinances § 21-82, which is applicable to service contracts with Burlington Electric Department where the amount of the contract or contracts with the same person or entity exceeds \$15,000 for any twelve-month period. As of March 1, 2009, the livable wage for employees who receive health care benefits is \$14.21 per hour. The livable wage for employees who do not receive health care benefits is \$15.83 per hour.

Contractor agrees to pay its employees working under this Agreement at least the livable wage during the period of time he or she expends on furnishing services funded by the City. Contractor understands that a covered employer who violates the livable wage ordinance may be barred from receiving a contract or grant from the City for a period of up to 2 years and may be subject to other civil enforcement remedies.

Non-Discrimination

14. Contractor agrees that it shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, sexual orientation, religion, and place of birth, or against a qualified individual with a disability. Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including, but not limited to: Title VII of the Civil Rights Acts of 1964; the Age Discrimination in Employment Act of 1973; the Americans With Disabilities Act; Title 21, Subchapter 6 of the Vermont Statutes Annotated, Fair Employment Practices; and all other applicable administrative orders and executive orders. Contractor shall be responsible for preparing all periodic reports related to these purposes and required by law or regulation.

Contractor agrees that if a complaint or claim alleging violating by it of such statutes, rules or regulations is presented to the Vermont Attorney General's Office, the Vermont Human Rights Commission, the Equal Employment Opportunity Commission or any other agency with jurisdiction, Contractor shall cooperate fully in the investigation and disposition of such complaint or claim.

Contractor agrees to indemnify, defend and save BED and its authorized agents, officers, representatives and employees harmless from and against any and all actions, penalties, liabilities, claims, demands, damages or losses, including reasonable attorneys' fees resulting from any claims asserting any form of discrimination or harassment as defined by state and/or federal law and by City Policy based on acts by the Contractor, its agents, officers, representatives, employees or contractors.

Indemnification

15. Contractor agrees, to the fullest extent permitted by the law, that it shall indemnify and hold harmless BED, its officers, agents and employees from liability for damages to third parties, together with costs, including reasonable attorney's fees, incurred in defending such claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of Contractor, its agents or employees, committed in the performance of the professional services to be provided by the Respondent under this Agreement.

BED agrees that it is responsible for its own actions and that Contractor is not obligated to indemnify BED or its officers, agents and employees for any liability of BED, its officers, agents and employees attributable to its, or their own, negligent acts, errors or omissions.

In the event BED, its officers, agents or employees are notified of claims asserted against it or them to which this Indemnification clause may apply, BED agrees that it shall immediately thereafter notify Contractor in writing that a claim to which the Indemnification Agreement may apply has been filed.

Severability

16. The Parties agree that in the event any provision of this Agreement is determined by a court of competent jurisdiction to be invalid under or in conflict with any applicable statute or any regulation or order of any regulatory agency having jurisdiction, such determination shall not result in the invalidation of the entirety of the Agreement, and all remaining provisions shall remain in full force and effect. The Parties shall attempt by mutual agreement to arrive at an amendment of this Agreement which eliminates such invalidity or conflict while at the same time permitting the accomplishment of the objectives of this Agreement.

Notices

17. Any notice, demand, consent, approval, or request made by a Party to the other pursuant to any provision of this Agreement shall be made in writing and shall be delivered in person, or by certified mail, return receipt requested, as follows:

If to BED: Daryl Santerre
Burlington Electric Department
585 Pine St
Burlington VT 05401

If to Contractor: KPMG LLP
Renee Bourget-Place
PO Box 564
Burlington VT 05401

Copy to: ~~K~~PMG LLP
General Counsel
757 Third Avenue
New York, NY 10017

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Each Party shall have the right to add or delete name(s) and address(es) to whom notice shall be given by giving the other Party prior written notice of such change(s).

Nonwaiver

18. Any waiver at any time by either Party of its rights with respect to any terms, conditions, remedies or defaults under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be construed or deemed to be a continuing waiver of the same or any other matter arising in connection with this Agreement and cannot be construed or deemed a waiver with respect to any subsequent default or other matter.

Complete Agreement

19. All the provisions of this Agreement are set forth in the writing herein and the attached engagement letter (see paragraph No. 3 at page 2, above as to any conflict between this Agreement and the engagement letter) which alone fully and completely expresses the agreement of BED and Contractor relating to this Agreement. This Agreement is entered into after full investigation and consideration by all Parties. This agreement may not be amended, except by instrument in writing, signed by the Parties hereto.

IN WITNESS WHEREOF, the Parties executed this Agreement the day and year first above written.

IN THE PRESENCE OF:

Hearsh M. Kunev

By: Renee Bourget - R
Renee Bourget-Place
KPMG LLP
Partner

Christy Mitchell

By: Daryl J. Santerre
Daryl Santerre,
CFO, Burlington Electric Department
Duly Authorized Officer

Margaret Ellis - Gr

By: Bob Kiss
Mayor Bob Kiss
Duly Authorized Officer

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