

## CITY OF BURLINGTON

### Request for Proposals

#### Kayak & Paddle Board Rentals at North Beach Park

City of Burlington, Vermont

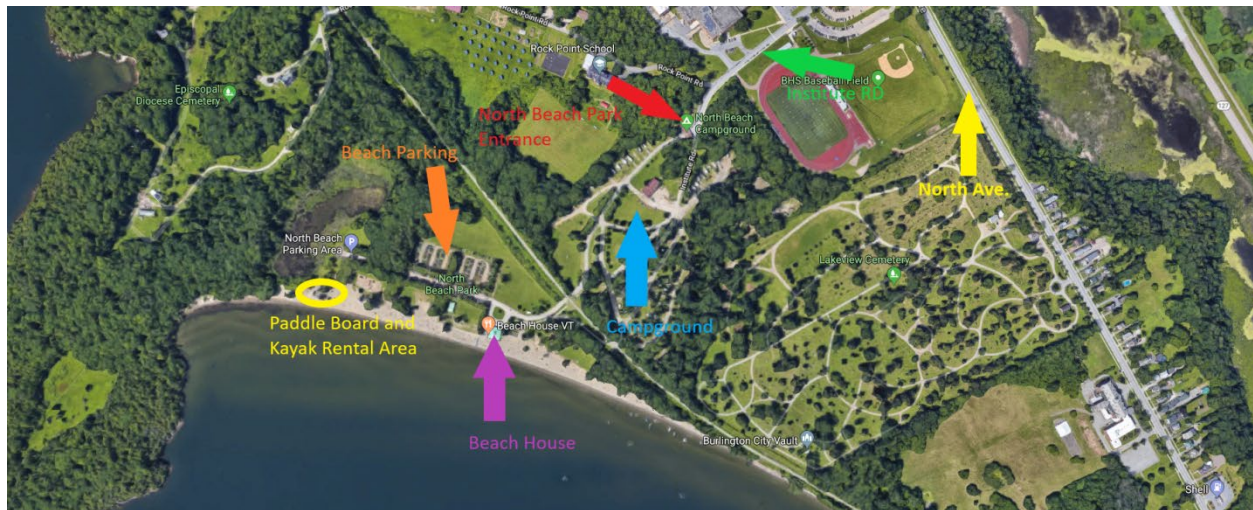
Issued: November 25<sup>th</sup>, 2019

Due: December 13<sup>th</sup>, 2019 No Later Than 4:00 P.M. est

#### I. PROJECT BACKGROUND

North Beach Park, Burlington, VT 05408

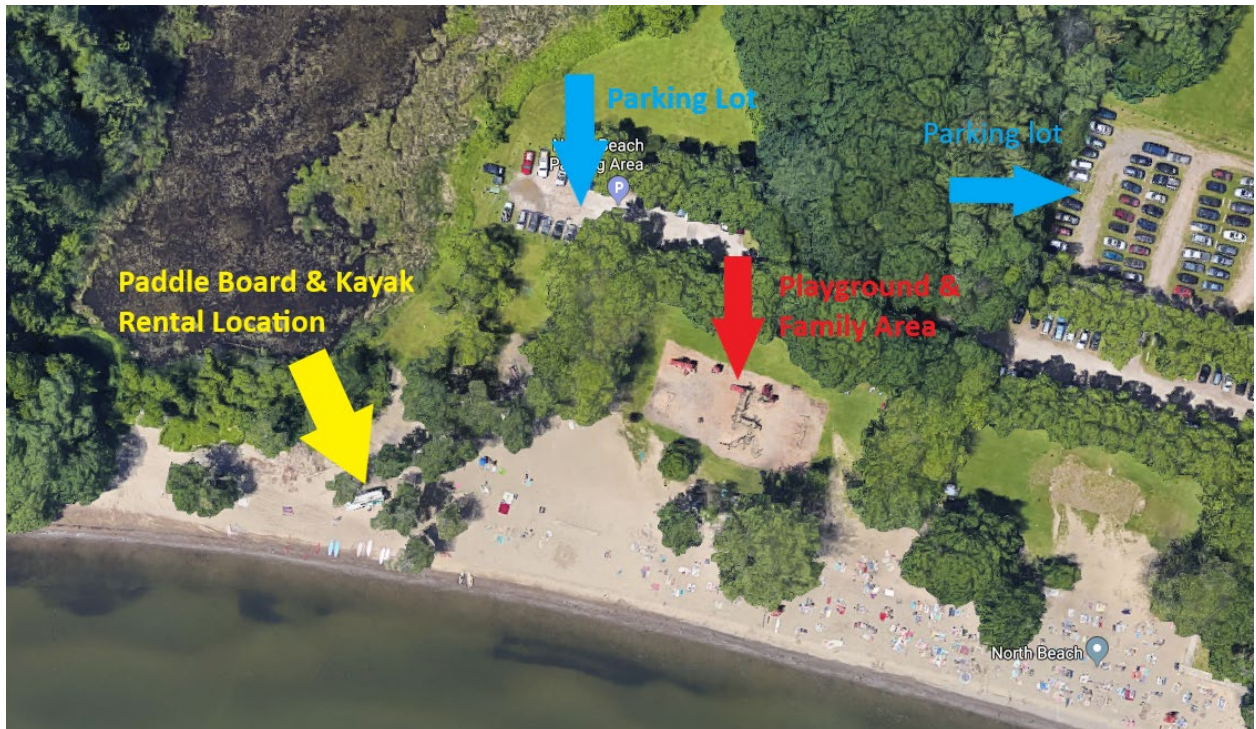
North Beach is a beautifully sandy beach located in the north end of Burlington, VT located at the end of Institute RD. It is one of the largest beaches in the state of Vermont and second largest on Lake Champlain. During the summer months the beach's swim area is watched over by 5 lifeguard stands and is groomed daily. North Beach Park also boasts several grill & picnic table areas for families to cook and enjoy a meal as well as a rentable shelter. At the north end of the beach is the large playground and family area for kids and families to play and eat. In the center you will find the Lifeguard shack, bathrooms, & Beach House restaurant and snack stand. When entering the park you first must drive through a 143 site campground.



#### II. SCOPE OF WORK

The Department of Parks, Recreation & Waterfront requests proposals from interested parties for a three – five year service contract to provide paddle craft (kayak, canoe, SUP, etc.) rentals at North Beach Park

- A. North Beach's annual seasonal schedule is from May 15 through Labor Day Weekend. We would expect the rental schedule to have a minimum season of mid-June through Labor Day. A rental schedule outside of this schedule is permissible upon approval.
- B. Concessionaire must offer a selection of non-motorized recreational watercraft to rent to the public. Watercraft instruction and demonstration of safe maneuvering is required by the concessionaire. A rental price sheet is required with all proposals, including cost of per hour, half day and full day rentals. If classes are conducted, class fees are required in the rental price sheet.
- C. Concessionaire must ensure that all rentals have Life jackets and that renters know how to use/wear them.
- D. Concessionaire may store rental equipment on site overnight and throughout the duration of the operating season, although concessionaire is responsible for providing their own safe and secure storage. This can be in the form of an enclosed trailer. All storage containers must be pre-approved by the City.
- E. For the allowance to conduct business operations at North Beach, the Department asks for a proposed compensation package of 10% of gross of revenue receipts, with a minimum payment of \$1,500.00 annually. All payments must be made on November 1<sup>st</sup> of each year the contract is active. Added compensation to the Department, through site improvement, programming, sponsorship or other forms will rank higher in proposal scoring selections.



### III. RESPONSE FORMAT

Responses to this RFP must be not more than 24 pages in length (12 double-sided or 24 single-sided pages) and include the following:

- 1) Qualifications Detail consisting of:
  - a) Cover letter including statement of understanding & approach to this project;
  - b) **ATTACHMENT A** (provided in this RFP): Signed by a representative of lead contractor attesting that all terms, conditions and procedures outlined in this RFP are understood and have been followed;
  - c) Proposed Project Team Members: Clearly indicate the applicant's designated project manager as well as sub-contractors who will be assigned to the work and their respective expertise in such work;
  - d) Specific Project Experience: Descriptions detailing completed, similar or relevant project experience that the applicant has executed. Links to similar or relevant projects are encouraged;
  - e) List of References: Provide a minimum of three client references with which the applicant has provided similar design/build services within the last five years. Include the name and telephone number of the contact person and a description of the role and services provided to that contact.
- 2) Technical Proposal consisting of:
  - a) A scope of work that includes steps to be taken;
  - b) A proposed schedule that indicates project milestones and overall time for completion;
  - c) Any other information deemed necessary to address the requests of this RFP.
- 3) Cost Proposal consisting of:
  - a) **ATTACHMENT B**: A completed and signed bid schedule outlining all items in dollar amounts and words.

Responses to this RFP must be received per the schedule outlined on Page 1 to be considered.

Proposals must be submitted in digital (PDF) or printed formats. Applicants will receive a confirmation email once their proposal is received. Please ensure that the document is easily printable in an 8.5x11 format.

#### **IV. CONSULTANT SELECTION**

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

1. **Experience & Qualifications;** relevant to key personnel and/or sub-contractors (20 pts)
2. **Project Understanding;** demonstrated understanding of project scope (20 pts)
3. **Ability to Meet Schedule;** required to complete the plan and deliverables (20 pts)
4. **Ability to Meet Budget/Value;** as related to proposed and additional costs (20 pts)
5. **Level of Experience;** with municipalities of similar size, structure and complexity (10 pts)
6. **Quality, Clarity & Completeness of Submittal Package** (10 pts)

#### **V. SUBMISSIONS**

Proposals should be submitted via email to Alec Kaeding, Campground and Beach Manager, Department of Parks, Recreation & Waterfront, [akaeding@burlingtonvt.gov](mailto:akaeding@burlingtonvt.gov).

Questions concerning this RFP should be directed to Alec Kaeding and received by **4:00 P.M. December 6<sup>th</sup>, 2019**. All answers to questions (all names withheld) will be publicly posted on our website, [www.enjoyburlington.com](http://www.enjoyburlington.com) for all interested parties to see. **Please submit all final proposals by 4:30 P.M. December 13<sup>th</sup>, 2019.**

#### **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, 128 State Street, Montpelier, VT 05633-1101, PH: 802-828-2363, Toll-free: 800-439-8683; Vermont Relay Service – 711; web site: <https://www.sec.state.vt.us/>. The contract will not be executed until the 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 Burlington Consultant Conditions (attachment A in this RFP). The certificate of insurance coverage shall be documented on forms acceptable to the City.

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

#### **VII. AGREEMENT REQUIREMENTS**

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

**VIII. LIMITATIONS OF LIABILITY**

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

**IX. COSTS ASSOCIATED WITH PROPOSAL**

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

**X. INDEMNIFICATION**

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

**XI. REJECTION OF PROPOSALS**

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

**XII. OWNERSHIP OF DOCUMENTS**

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

**XIII. PUBLIC RECORDS**

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



## ATTACHMENT C

### **BURLINGTON CONSULTANT CONDITIONS**

- 1. 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(s) or employees is entitled to any employee benefits from the City. Consultant understands and agrees that it and its Principal(s) or employees have no right to claim any benefits under the Burlington Employee Retirement System, the City's worker's compensation benefits, health insurance, dental insurance, life insurance, or any other employee benefit plan offered by the City. The 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.

- 2. 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. The City retains the right to participate, at its own expense, in the defense of any claim, and to approve all proposed settlements of claims to which this provision applies. Under no conditions shall the City be obligated to indemnify the Consultant or any third party, nor shall the City be otherwise liable for expenses or reimbursement including attorney's fees, collection costs, or other costs of the Consultant or any third party.
- 3. 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](http://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 (with the exception of professional liability and worker's compensation) shall name the City as an additional insured for the possible liabilities resulting from the 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 Contractors' Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Contractual Liability
6. Broad Form Property Damage
7. Medical Expenses
8. Collapse, Underground and Explosion Hazards

Coverage limits shall not be less than:

1.	General Aggregate	\$2,000,000
2.	Products-Completed/Operations	\$2,000,000
3.	Personal & Advertising Injury	\$1,000,000
4.	Each Occurrence	\$1,000,000
5.	Fire Damage (Any one fire)	\$ 250,000
6.	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 each employee

**C. PROFESSIONAL LIABILITY INSURANCE:**

1. General. The Consultant shall carry \_\_\_\_\_ 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

4. **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.

5. **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 identity, national origin, disability or veteran status. Consultant, and any subcontractors, shall comply with any Federal, State, or local law, statute, regulation, Executive Order, or rule that applies to it or the services to be provided under this contract concerning equal employment, fair employment practices, affirmative action, or prohibitions on discrimination or harassment in employment.
6. **CHILD SUPPORT PAYMENTS:** By signing the Agreement, the Consultant certifies, as of the date of signing the Agreement, that the Consultant (a) is not under an obligation to pay child support; or (b) is under such an obligation and is in good standing with respect to that obligation; or (c) has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan. If the Consultant is a sole proprietorship, the Consultant's statement applies only to the proprietor. If the Consultant is a partnership, the Consultant's statement applies to all general partners with a permanent residence in Vermont. If the Consultant is a corporation, this provision does not apply.
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, that the Consultant 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 with appropriate and valid licensure, to the extent a license is required for the work performed. 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. Any City employees 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 as determined by the City, in the due and proper performance of Consultant's duties, or for neglecting or refusing 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, shall not be transferred without written authorization of the City. Any authorized sub agreements shall

contain all of the same provisions contained in and attached to the original Agreement with the City.

- 11. CONTINUING OBLIGATIONS:** The Consultant agrees that if because of death, disability, 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 unless the City agrees to terminate the Agreement because it determines that the Consultant is unable 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 the City 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 express written 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 the manufacture, use, and disposition of each such discovery or invention that may be developed as a part of the work under the Agreement.
- 14. PUBLIC RECORDS:** The 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, Electronic Data Media (EDM), accounting records, and other records produced or acquired by the consultant in the performance of this agreement which are related to the City, at any time during this Agreement and for a period of at least three (3) years after its completion or termination. In addition, if any audit, claim, or litigation is commenced before the expiration of that three (3) year period, the records shall be retained until all related audits, claims, or litigation are resolved. The 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 in the format in which the records were obtained, created, or maintained, such that their original use and purpose can be achieved. 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, to the extent permitted by law, 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 to the Work 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 conditions 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 Work.
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 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.

4. Contract Disputes. In the event of a dispute between the parties to this agreement each party will continue to perform its obligations unless the Agreement is terminated in accordance with these terms.

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

**23. RESPONSIBILITY FOR SUPERVISION:** The Consultant shall assume primary responsibility for general supervision of Consultant employees and 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. The Consultant shall be responsible to the City for all acts or omissions of its subcontractors and any other person performing work under this Agreement.

**24. PERFORMANCE IN ACCORD WITH PROFESSIONAL STANDARDS:** Consultant shall perform the Work in the best and most workmanlike manner consistent with professional standards. If any of the Work is rejected by the City as failing to meet professional standards, Consultant will remove and replace the defective portions to the satisfaction and approval of the City, at the cost and expense of Consultant.

**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 19 V.S.A. § 35 and §.503, 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. 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. All payments will be made in reliance upon the accuracy of all representations made by the Consultant, whether in invoices, progress reports, emails, or other proof of work. 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 incurred, the 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 end.

**33. 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. Any adjustments

of this nature shall be executed under the appropriate fee established in the Agreement, based on the adjusted quantity of work.

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

The 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 that may be necessitated as a result of extra work or additional services and changes shall be given consideration and evaluated insofar as it directly relates to the change.

**34. CONFLICT OF INTEREST:** The Consultant shall disclose in writing to the City any actual or potential conflicts of interest or any appearance of a conflict of interest by the Consultant, its employees or agents, or its subcontractors, if any.

**35. NO GIFTS OR GRATUITIES:** The Consultant shall not make any payment or gift or donation of substantial value to any elected official, officer, employee, or agent of the City during the term of this Agreement.

**36. ACCEPTANCE OF FINAL PAYMENT; RELEASE:** Consultant's acceptance of the final payment shall be a release in full of all claims against the City or its agents arising out of or by reason of the Work.

**CITY OF BURLINGTON  
DRAFT CONSULTANT  
AGREEMENT**

This Consultant Agreement ("Agreement") is entered into by and between the City of Burlington, Vermont ("the City"), and \_\_\_\_\_ ("Consultant"), a Vermont corporation located at \_\_\_\_\_.

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

**1. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

**A. "Agreement Documents"** means all the documents identified in section 4 of this Agreement.

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

## 2. RECITALS

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

## 3. EFFECTIVE DATE, TERM, AND TERMINATION

- A. **Effective Date.** This Agreement shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Agreement before the Effective Date and shall have no obligation to pay Consultant for any performance or expense incurred before the Effective Date or after the expiration or termination of this Agreement.
- B. **Term.** This Agreement and the Parties’ respective performance shall commence on the Effective Date and expire on \_\_\_\_\_ or upon the satisfaction of the City, unless sooner terminated as provided herein.
- C. **Termination.** This Agreement

## 4. AGREEMENT DOCUMENTS

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

The following documents constitute the Agreement Documents:

Attachment A: Request for Proposals dated \_\_\_\_\_

Attachment B: Consultant's Response to Request for Proposals dated \_\_\_\_\_

Attachment C: Burlington Consultant Conditions

Attachment E: Burlington Livable Wage Ordinance Certification

Attachment F: Burlington Outsourcing Ordinance Certification

Attachment G: Burlington Union Deterrence Ordinance Certification

Attachment H: Consultant's Certificate of Insurance

## 5. SCOPE OF WORK

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

## 6. PAYMENT FOR SERVICES

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

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

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

- C. Maximum Limiting Amount.** The total amount that may be paid to the Consultant for all services and expenses under this Agreement 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.

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

[Name, address, phone, email]

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

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

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

## **7. COMPLIANCE WITH LAWS**

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

## **8. BINDING EFFECT AND CONTINUITY**

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

## **9. SEVERABILITY**

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

## **10. ENTIRE AGREEMENT**

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

#### **11. NO THIRD PARTY BENEFICIARIES**

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

#### **12. ASSIGNMENT**

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

#### **13. WAIVER**

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

#### **14. FORCE MAJEURE**

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

#### **15. CHOICE OF LAW**

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

#### **16. JURISDICTION**

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

#### **17. ARM'S LENGTH**

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

#### **18. SECTION HEADINGS**

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

— Signatures follow on the next page —



## 19. SIGNATURE

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

**Consultant**  
**(Name of Consultant)**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**City of Burlington**  
**Parks Recreation & Waterfront**

**By:** \_\_\_\_\_

Cindi Wight  
Director of Parks Recreation & Waterfront

**Date:** \_\_\_\_\_