



# REQUEST FOR PROPOSALS (RFP)

**Date:** Wednesday, January 20, 2021  
**To:** Open Invitation to Architects, Engineers  
**From:** Burlington Parks, Recreation & Waterfront  
**Re:** 311 North Ave, Stone House Cottage

## **I. GENERAL INFORMATION**

311 North Ave, Burlington, VT 05401

Burlington Parks, Recreation & Waterfront (BPRW) is requesting proposals from qualified professionals to complete a building assessment for the Stone House Cottage onsite. A full scope is included in Section III. Questions concerning this RFP must be made via email per the schedule outlined below. Responses to all submitted questions will be posted at: <http://www.burlingtonvt.gov/RFP>.

Issue date:	Wednesday, January 20, 2021
Optional site visit:	Monday, February 1, 2021 at 12:30 PM
Questions due:	Thursday, February 4, 2021 by 4:00 PM
Answers posted:	Monday, February 8, 2021 by 4:00 PM
Proposals due:	Thursday, February 11, 2021 by 4:00 PM
Proposal review, award	by February 19, 2021
Contract signing, kickoff:	Week of February 22, 2021

Inquiries/submissions to: **Cindi Wight, Director**  
Burlington Parks, Recreation & Waterfront  
[cwight@burlingtonvt.gov](mailto:cwight@burlingtonvt.gov)  
(802) 495-1919

## **II. PROJECT DESCRIPTION**

BPRW seeks services from a qualified consultant or team of consultants to perform a building assessment of the Stone House Cottage, located at 311 North Avenue, Burlington, to include a capital improvement plan, conceptual level cost estimates, and phasing strategy for consideration. Consultant(s) should develop conceptual plan(s) for the interior and exterior to accommodate programming. The assessment should also include an analysis to identify appropriate locations for accessible entryways to building/garage based on connections to the walkways, parking lot/driveway and vehicular and pedestrian circulation of the hardscape features surrounding the site. The original portion of the building is under a historic preservation easement, which will require knowledge of historic structures.



Due to a donor's generosity, we have \$200,000 in funding available (which includes the cost of this contract), inclusive of any design, construction, and permitting costs, to improve the building and make it available to the community for the initial phase (which includes public access and a(n) accessible restroom). **To reiterate, public access to the building must be included in Phase 1 of the project and must be achievable with existing funds indicated above.** The City has set aside an additional \$24,000 to replace the roof shingles.

### **III. PROJECT BACKGROUND**

311 North Ave is a new City Park and is the home to our Conservation program since 2018. Staff on-site include management, customer service, community programming, and maintenance.

In 2016 the City purchased 12 acres of the former Burlington College property. The City accessed multiple funding sources to acquire the property, each of which provides some context and limitations to the existing historical Cottage on-site:

- Land, Water and Conservation Fund, which requires the property and structures support outdoor recreation and be open to the public, including access to restrooms.
- Vermont Housing and Conservation Board, which has the overall conservation easement over the entire property.
- The majority of the exterior, portions of the interior, and elements of the landscape are covered under a Historic Preservation Easement co-held by the Preservation Trust of Vermont and the Vermont Housing and Conservation Board
- Private donation that included funds specifically to secure and improve the Stone House to ensure community access.

The Stone House Cottage is the home for the Parks Division Conservation Team. The mission of the Conservation Team in the broadest sense is to support and heal the relationship between humans and nature in the Burlington landscape and to protect and promote biodiversity in the City. Programming of the space should mirror this mission by providing facility support to the staff and volunteer operations of the conservation program as well as public space(s) that will provide a broad range of services and resources.

The Conservation Program manages over 200 acres of conservation areas throughout the City, these areas include 14 community gardens sites and over 35 miles of paved and unpaved trails. Within these natural areas, gardens and trail corridors the Conservation Program is actively managing over 45 acres of regenerative plantings areas where there is active removal of invasive plant species and re-introduction of native plants. Additionally, at 9 of the 14 community garden sites include permaculture plantings to increase food security for people and habitat for wildlife. The Conservation team resources this work with 2.5 FTE employees, 5-6 seasonal employees and 500-800 volunteers annually who perform 7,000-9,000 volunteer hours annually.

Ideas from staff include dedicating a portion(s) of the Stone House Cottage as an accessible information and education center for Burlington natural areas and open spaces. The services and resources likely will center on a variety of system themes such as place-based natural history, social and climate justice,



climate adaptation and ecosystem resilience. There is intention to strengthen this programming through integrating institutional and community partners into the offerings in the space. Discussions with the library have begun to make available rotating book collections that relate back to the system themes mentioned above. UVM has also expressed interest in using the Stone House Cottage to display exhibits of plants and animals from their taxidermy and herbarium collection. Other information may be provided on-site i.e. trail networks, natural areas, Abenaki heritage, etc. and opportunities for visitors to sign-up for a community garden plot or a volunteer service project. Staff would find useful public access to digital platforms via public computers and workstation(s).

Beyond these operational frameworks, the Conservation Program plays an integral role in the direction, facilitation, and leadership of a variety of community partnership, conservation education initiatives, and coalition models. These include but are not limited to Burlington Wildways, The Grow Wild Initiative (which includes Bee City USA), the Burlington chapter of the Vermont Master Naturalist Program, Burlington Mammal Tracking Project, BTV Conservation News, and the Lower Winooski River Corridor Project. Additionally, the program plays an active role in the City's Race Equity Inclusion and Belonging Team and support 2-5 UVM, Champlain College and BHS service learning projects annually.

#### **IV. SCOPE OF WORK**

Full coordination between the Consultant and City staff, particularly the Project Manager, is key to the project and is required throughout the project process.

While the following outline illustrates a general process and structure, we are open to and interested in hearing any approaches beneficial to the project. The list and order of activities outlined below may be amended and finalized at the project kickoff attended by the City Project Team and would solidify project objectives, formalize project schedules, milestones, and deadlines and establish contact. We anticipate a minimum of three meetings between the Consultants and the City Project team. BPRW will provide a meeting space/ virtual conferencing option. The Consultant will draft the meeting agenda with BPRW input, facilitate meetings, and record and distribute minutes as part of the deliverables.

The City is looking for the following tasks to be accomplished, however, the order or sequence should be proposed via the RFP response. The scope of work includes, but is not limited to:

**Task 1: Building assessment to include a review of the integrity and limitations of the Stone Cottage, including:**

- Architectural/Structural
- Building and Fire Code
- Accessibility
- Historic Limitations

A summary of the assessment should be delivered and immediately call out any health/safety or accessibility issues specifically with estimated correction costs.

BPRW Parks Facilities has assessed mechanical, plumbing and electrical needs and is available to meet with consultant as needed.



## **Task 2: Programming**

Meet with City Project Team to understand the building's programming needs (both public and staff) and provide 2-3 conceptual floor plans/diagrams with projected costs for each Proposal.

### Known programming needs

- Office space year-round for 4-5 staff
- Office space seasonally for 2-3 staff
- Community room for education programs and meetings
- Public space for volunteers, computer access and area to view maps and displays
- Restrooms with one to maintain a shower and one to be accessible from the outside
- Storage for 600-1000ft of storage with overhead door access for loading and unloading

## **Task 3: Site analysis as it relates to the building**

The site analysis is not a full site analysis of the property but relates to the building, its surroundings and supporting infrastructure (garage, paths, parking, driveway & circulation). Due to the proposed programming options, grades and the historical limitations of the building, multiple accessible/non-accessible entrances may be required.

As part of this task, provide 2-3 conceptual level sketches/diagrams for the site as it relates to the building and task 2.

## **Task 4: Sustainability**

Meet with City staff to discuss sustainability and energy goals.

## **Task 5: Deliverables**

Final project report documenting project process and key deliverables both original, editable format, GIS for any plans and in .pdf format; including:

- Executive summary
- Summarized Building Assessment Report with itemized detail of non-compliant code issues/dangerous conditions and conceptual level corrective costs
- 2-3 conceptual level proposals for interior floor plan(s) including cost estimates
- 2-3 conceptual level site plan(s) of exterior layout including costs estimates
- Propose a prioritized capital improvement plan, including phased approaches as needed.

As stated earlier, the proposed first phase of the plan must be accomplished within the existing budget (described in section II) which includes public access and public bathrooms.

Final project report draft to be reviewed by City Team for feedback and revisions before final report and project completion.

City Project Team includes, but is not limited to: Superintendent of Maintenance and Operations, Parks Conservation Team, Parks Facilities Team, and Department Director.



## **V. RESPONSE FORMAT**

Questions concerning this Request for Proposals (RFP) must be made via email to the point of contact above. Responses to all submitted questions will be posted at: <http://www.burlingtonvt.gov/RFP> by the noted date. Any revisions, addendums, and answers to questions received by the question deadline will be sent to Consultants who attended the pre-bid meeting.

Responses to this RFP must be not more than 24 pages in length (12 double-sided or 24 single-sided pages), received per the schedule outlined on Page 1 to be considered. Proposals must be submitted electronically as a .pdf. Applicants will receive a confirmation email once their Proposal is received. Please ensure that the document is easily printable in an 8.5x11 format.

Responses must include the following:

- 1) Qualifications Details consisting of:
  - a) Cover letter including statement of understanding to this project;
  - b) Proposed Project Team Members: A description of the team composition, areas of expertise, and role of each member and sub-consultant on the team. Clearly indicate the applicant's designated project manager as well as sub-consultants who will be assigned to the work for the length of the project and their respective expertise in such work;
  - c) Specific Project Experience: Descriptions detailing completed, similar or relevant project experience that the applicant has executed. Links to similar or relevant projects are encouraged;
  - d) List of References: Provide a minimum of three client references with which the applicant has provided similar planning and design services within the last five years. Include the name, telephone number and email address of the contact person and a description of the role and services provided to that contact.
  - e) Attachment A (provided in this RFP): Signed by a representative of lead consultant attesting that all terms, conditions and procedures outlined in this RFP are understood and have been followed;
- 2) Technical Proposal consisting of:
  - a) A description of the approach to be taken toward completion of the project, an explanation of any variances to the proposed scope of work as outlined in the RFP;
  - b) A scope of work that includes steps to be taken, including any products or deliverables;
  - c) A summary of estimated labor hours by task that clearly identifies the project team members and the number of hours performed by each sub-consultant by task;
  - d) A proposed schedule that indicates project milestones, including deliverables, and overall time for completion;
  - e) Any other information deemed necessary to address the requests of this RFP.
- 3) Cost Proposal consisting of: composite schedule by task of direct labor hours;



- a) An itemized schedule of all expenses, including both labor and direct expenses. If the use of sub-consultants is proposed, a separate schedule of hours and expenses must be provided for each sub-consultant)

## **VI. CONSULTANT SELECTION**

Proposals will be reviewed and evaluated by City staff based on the information provided. Proposals will be rated according to the following criteria (Total of 100 points possible).

1. **Experience & Qualifications:** Qualifications and experience of staff identified to work on this project (including sub-consultants) and the role and time that each member will perform on the project. (15 pts)
2. **Project Understanding & Knowledge of Area:** Demonstrated understanding of the parameters of this project, its limitations and potential. (15 pts)
3. **Ability to Meet Schedule:** Identify strategies to be applied to complete the plan and deliverables within the identified timeline. (15 pts)
4. **Ability to Meet Budget/Value:** Outline how the project will be managed as related to proposed and any anticipated additional costs. Estimate of resource allocations to each component of the project and availability of qualified staff. (15 pts)
5. **Depth of Skills:** Depth or relevant technical experience in undertaking this type of project. (10 pts)
6. **Demonstration of Innovative Approaches:** How were similar projects approached, challenges addressed and objectives achieved. (10 pts)
7. **Level of Experience:** Demonstrated experience working with municipalities of similar size, structure and complexity on similar projects. (10 pts)
8. **Quality, Clarity & Completeness of Submittal Package** (10 pts)

The City requires that all related work, inclusive of design, be completed by **June 30, 2021**. The City anticipates that the selected Consultant will be awarded the project in late February 2021. The City reserves the right to amend all dates. While this timeline may be subject to change, all participating parties will be notified.

## **VII. SUBMISSIONS**

Proposals and questions shall be submitted via e-mail to:

Cindi Wight

Director

Burlington Parks, Recreation & Waterfront

[cwight@burlingtonvt.gov](mailto:cwight@burlingtonvt.gov)

Additional submission requirements are as follows:

- Responses to this RFP must be received per the schedule outlined on Page 1 to be considered.
- Applicants are solely responsible for ensuring that proposals arrive on time.
- Each applicant **MUST** provide their submittal electronically as a PDF.
- Faxed proposals **WILL NOT** be accepted.
- Late replies **WILL NOT** be considered.



### Communications

It is important that all respondents are given clear and consistent information. Therefore, all respondents are required to submit any questions related to this project or RFP process via email. Responses to all submitted questions will be posted with this RFP at the City website at: <http://www.burlingtonvt.gov/RFP>. Questions concerning this RFP must be received via email per the schedule outlined on page 1. Inquiries received after this date will not be considered or answered.

Respondents should not communicate with any City department or employee during the submission process except as described above. In addition, no communications should be initiated by a respondent to any City Official or persons involved in evaluating or considering the statement of qualifications. Communication with any parties for any purpose other than those expressly described herein may cause an individual firm, or team to be disqualified from participating.

### Other terms

The City reserves the right to request clarification of information submitted and to request additional information of one or more respondents. All materials submitted in response to this RFP will become the property of the City upon delivery. This solicitation in no way obligates the City of Burlington to award a contract.

It will be necessary for responding parties to comply fully with the terms and conditions outlined in this document if they are to be considered. A letter attesting that the respondent has read, understands, and followed all procedures is a part of this RFP must be included as part of the final submittal (Attachment A).

## **VIII. EXHIBITS**

- A. Exhibit A: Understanding of RFP Procedures, Terms and Conditions
- B. Exhibit B: Additional Project Information
- C. Exhibit C: Draft Contract
- D. Exhibit D: Burlington Standard Contract Conditions
- E. Exhibit E: Burlington Livable Wage Ordinance Certification (if applicable)
- F. Exhibit F: Burlington Outsourcing Ordinance Certification (if applicable)
- G. Exhibit G: Burlington Union Deterrence Ordinance Certification (if applicable)

Bid documents include this main body of the request for proposals and all exhibits.

## **IX. CONTRACTING**

The Consultant must qualify as an independent consultant and, prior to being awarded a contract, must 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.

Prior to beginning any work, the Consultant shall obtain Insurance Coverage in accordance with the Burlington Consultant Conditions (Exhibit D 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 person or entity, 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.

#### **X. 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 to those in the Burlington Consultant Conditions (Exhibit D) and the attached Draft Agreement.

#### **XI. LIMITATIONS OF LIABILITY**

The City assumes no responsibility or liability for the response to this Request for Proposals.

#### **XII. 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, including any requests for additional information or interviews. The City will not reimburse any person or entity for any costs incurred prior to the issuance of the contract.

#### **XIII. 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 response.

#### **XIV. 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.

#### **XV. 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.





## **XVI. DUTY TO INFORM CITY OF BID DOCUMENT ERRORS**

If a bidder knows, suspects, or has reasonable cause to believe, that an error or omission exists in any of the bid documents, including but not limited to unit prices and rate calculations, the bidder shall immediately give the City written notice thereof. Consultant shall not cause or permit any work to be conducted that may related to the error or omission without first receiving written acknowledgment from the City that City representatives understand the possible error or omission and have approved the requested modifications to the bid or contract documents or that the Consultant may proceed without any modification being made to the bid or contract documents.

## **XVII. 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 of the responding party considered 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.

## **XVIII. PUBLIC HEALTH EMERGENCIES**

Bidders are advised that public health emergencies, as declared by the City, the State of Vermont, or the Federal Government, including the current pandemic of Novel Coronavirus (COVID–19), may introduce significant uncertainty into the project, including disruption of timelines or revised practices. Consultants shall consider public health emergencies as they develop project schedules and advance the work.

The City may require a public health emergency plan be submitted as part of the bid. This plan will contain:

- 1) Measures to manage risk and ensure that potential impacts to safety and mobility are mitigated in accordance with health and safety standards and guidelines proposed by local, state, and federal agencies (see attached Draft Contract, Sections 15 and Exhibit C);
- 2) A schedule for possible updates to the plan in advance of the start of work (see attached Draft Contract, Section 15); and
- 3) Means to adjust the schedule and sequence of work should the emergency change in nature or duration.

The City will have sole discretion to approve, deny, or require changes to this plan as a condition of consideration of the bid, will retain the right to inspect all work to ensure compliance with health and safety standards, and may at any time require the Consultant to stop work because of the emergency.



If a public health emergency is declared, the City will not be responsible for any delays related to the sequence of operations or any expenses or losses incurred as a result of any delays. Any delays related to public emergencies, including the current pandemic of Novel Coronavirus (COVID-19), will be excusable, but will not be compensable.



## EXHIBIT A

### Understanding of RFP Procedure, Terms and Conditions

*This page to be returned with qualifications submission*

I acknowledge that I have read and understand all procedures and requirements of the above reference RFP and have complied fully with the general terms and conditions outlined in the RFP.

Consultant/Team: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

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



## **EXHIBIT B**

### **Additional Project Information: Reports and Plans**

(The first four documents are in a separate PDF titled Exhibit B)

- Building Plan
- Historic Structure Evaluation
- Historic Preservation Easement
- Conservation Easement
- Area Locator Map



## Area Locator Map – parcel outlined

### Vermont Parcel Program



*311 North Ave – Locator Map. Access to the Stone House is from North Ave.*



**Exhibit C:**  
Draft Contract



**CITY OF BURLINGTON**  
**DRAFT CONSULTANT CONTRACT**

This Consultant Contract (“Contract”) is entered into by and between the City of Burlington, Vermont (“the City”), and [REDACTED] (“Consultant”), a Vermont corporation located at [REDACTED].

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

**1. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

- A. “Contract Documents”** means all the documents identified in Section 4 (Scope of Work) of this Contract.
- B. “Effective Date”** means the date on which this Contract 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 [REDACTED].
- E. “Work”** means the services described in Section 5 (Payment for Services) of this Contract, along with the specifications contained in the Contract Documents as defined in Section 4 (Scope of Work) below.

**2. RECITALS**

- A. Authority.** Each Party represents and warrants to the other that the execution and delivery of this Contract 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 Contract.
- C. Purpose.** The City seeks to employ the Consultant to [REDACTED].

**3. EFFECTIVE DATE & 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 [ ] or upon the satisfaction of the City, unless sooner terminated as provided herein.

#### 4. 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).

#### 5. 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 Contract Documents [or as follows: ]. The City seeks to make payment within thirty days of receipt of an invoice and any backup documentation requested under subsection D (Invoice) below.
- C. 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.
- 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 Contract without providing sufficient backup documentation satisfactory to the City.

#### 6. SECTION & ATTACHMENT HEADINGS





The article and attachment headings throughout this Contract are for the convenience of City and Consultant and are not intended nor shall they be used to construe the intent of this Contract or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.

## **7. CONTRACT DOCUMENTS & ORDER OF PRECEDENT**

- A. Contract Documents.** The Contract Documents are hereby adopted, incorporated by reference, and made part of this Contract. The intention of the Contract 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 Contract Documents:**

**Attachment A: Request for Proposals dated [REDACTED]**

**Attachment B: Consultant's Response to Request for Proposals dated [REDACTED]**

**Attachment C: Burlington Standard Contract Conditions for Consultants**

**Attachment D: Burlington Livable Wage Ordinance Certification**

**Attachment E: Burlington Outsourcing Ordinance Certification**

**Attachment F: Burlington Union Deterrence Ordinance Certification**

**Attachment G: Consultant's Certificate of Insurance**

- B. Order of Precedent.** To the extent a conflict or inconsistency exists between the Contract Documents, or provisions therein, then the Contract takes precedent. Any Invitation for Bids, Additional Contract Provisions, and the City Ordinance Certifications shall prevail over any inconsistency with the Contractor's Scope of Work and Cost Proposal.

## **8. [Reserved]**

— Signatures follow on the next page —



## 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**

**[Department]**

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

**[Name]**

**[Title]**

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



**Exhibit D:**

Burlington Standard Contract Conditions



## **BURLINGTON STANDARD CONTRACT CONDITIONS FOR CONSULTANTS**

### **1. DEFINITIONS:**

- A.** The “Contract” shall mean the Contract between Consultant and the City to which these conditions apply and includes this Attachment C.
- B.** The “Consultant” shall mean \_\_\_\_\_.
- C.** The “City” shall mean the City of Burlington, Vermont or any of its departments.
- D.** The “Effective Date” shall mean the date on which the Contract becomes effective according to its terms, or if no effective date is stated, the date that all parties to it have signed.
- E.** The “Parties” shall mean the parties to this Contract.
- F.** The “Work” shall mean the services being provided by the Consultant, as provided in the Contract.

### **2. 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 Contract is effective. This registration must be complete prior to Contract execution.

### **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 Contract. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. If this Contract extends to more than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Copies of any insurance policies may be required. Each policy (with the exception of professional liability and worker’s compensation) shall name the City as an additional insured for the possible liabilities resulting from the Consultant’s actions or omissions. 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 Contract shall meet minimum coverage and limits.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the 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 ensure that general liability insurance coverage, on an occurrence form, provides all major divisions of coverage including, but not limited to:

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

Coverage limits shall not be less than:

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

B. Workers' Compensation: With respect to all operations performed, the 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 Contract. Minimum limits for Employer's Liability:

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

C. Professional Liability Insurance:

1. General: The Consultant shall carry appropriate 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 Contract 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 Contract. 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. 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 subconsultants, if any.

**5. 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 Contract including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.

**6. 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 Contract.

Except with the approval of the City, during the life of the Contract, the Consultant shall not



employ:

1. Any City employees who are directly involved with the awarding, administration, monitoring, or performance of the Contract or any project(s) that are the subjects of the Contract.
2. Any 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 Contract, and that no company or person has been paid or has a contract 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 Contract. For breach or violation of this warranty, the City shall have the right to annul the Contract, without liability to the City, and to regain all costs incurred by the City in the performance of the Contract.

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

- 7. PERFORMANCE:** Consultant warrants that performance of Work will conform to the requirements of this Contract. Contractor shall use that degree of ordinary care and reasonable diligence that an experienced and qualified provider of similar services would use acting in like circumstances and experience in such matters and in accordance with the standards, practices and procedures established by Contractor for its own business.
- 8. DESIGN STANDARDS:** Unless otherwise specifically provided for in the Contract, 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 Contract. 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.
- 9. 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 Contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Contract. The Consultant shall be responsible to the City for all acts or omissions of its subconsultants and any other person performing work under this Contract.



**10. 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.

**11. 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 Contract, as well as any preparatory work, work-in-progress, or completed work at a field site, where applicable.

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.

**12. 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 Contract. 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.

**13. 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 Contract. 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.





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

**15. APPEARANCES:**

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

The 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 Contract.

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 Contract.

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

- B. Appearance as Witness: If and when required by the City, the 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 Contract.

**16. 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 Contract. 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 Contract, the progress report shall summarize actual costs and any earned portion of fixed fee.

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

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



and must be accompanied with documentation to substantiate their charges.

No approval given or payment made under the Contract, shall be conclusive evidence of the performance of the Contract, 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 Contract.

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

- 17. DUTY TO INFORM CITY OF CONTRACT DOCUMENT ERRORS:** If Consultant knows, or has reasonable cause to believe, that a clearly identifiable error or omission exists in the Contract Documents, including but not limited to unit prices and rate calculations, Consultant shall immediately give the City written notice thereof. Consultant shall not cause or permit any Work to be conducted which may relate to the error or omission without first receiving written notice by the City that City representatives understand the possible error or omission and have approved of modifications to the Contract Documents or that Consultant may proceed without any modification being made to Contract Documents.
- 18. NON-APPROPRIATION:** The obligations of the City under this Contract 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 Contract, the Contract 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 Contract 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. 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 Contract 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.
- 19. CHANGES AND AMENDMENTS:** No changes or amendments to the Work of the Contract shall be effective unless documented in writing and signed by authorized representatives of the City and the Consultant.
- 20. 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 Contract. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the City may decide. Time extensions shall be granted by amendment, only for excusable delays, such as delays beyond the control of the Consultant



and without the fault or negligence of the Consultant.

## **21. PUBLIC HEALTH EMERGENCY:**

- A. Compliance with Mandates and Guidance: The Consultant is advised that public health emergencies—meaning public health emergencies, as declared by the City, the State of Vermont, or the Federal Government—may introduce significant uncertainty into the project. The Consultant must comply with all local, state, federal orders, directives, regulations, guidance, advisories during a public health emergency. Consultant shall adhere to the below provisions and consider public health emergencies as it develops project schedules and advances the Work.
- B. Creation of Public Health Emergency Plan: For any work performed on-site at a City location, the Consultant shall create a public health emergency plan acceptable to the City. The Consultant shall be responsible for following this plan and ensuring that the project or site is stable and in a safe and maintainable condition.
- a. Public Health Emergency Plan: The Public Health Emergency Plan will contain:
    - i. Measures to manage risk and mitigate potential impacts to the health and safety of the public, the City and Consultant’s workers;
    - ii. Explicit reference to any health and safety performance standards and mandates provided by the City, the State of Vermont, the Federal government, or other relevant governmental entities;
    - iii. A schedule for possible updates to the plan as standards and mandates change; and
    - iv. Means to adjust the schedule and sequence of work should the emergency change in nature or duration.
  - b. Review and Acceptance of Plan:
    - i. Consultant must provide the plan to the City by the Effective Date of this Contract or by one (1) week prior to the commencement of on-site activities, whichever is later.
    - ii. The City shall have sole discretion to require changes to the plan.
    - iii. The City may revisit the plan at any time to verify compliance with obligations that arise under a state of emergency.
- C. Enforcement & Stoppage of Work: Consultant fails to comply with either 1) the approved public health emergency plan, or 2) any local, state, federal orders, directives, regulations, guidance, or advisories during a public health emergency, the City may stop Work under the Contract until such failure is corrected. Such failure to comply shall constitute a breach of the Contract.



Upon stoppage of work, the City may allow Work to resume, at a time determined by the City, under this Contract if such failure to comply is adequately corrected. The City shall have sole discretion in determining if Consultant has adequately corrected its failure to comply with the above.

If Consultant's breach of Contract has not been cured within seven (7) days after notice to stop Work from the City, then City may terminate this Contract, at its discretion.

- D. City Liability Relating to Potential Delays:** If a public health emergency is declared, the City will not be responsible for any delays related to the sequence of operations or any expenses or losses incurred as a result of any delays. Any delays related to a public health emergency will be excusable, but will not be compensable.

**22. FORCE MAJEURE:** Neither Party to this Contract shall be liable to the other for any failure or delay of performance of any obligation under this Contract to the extent the failure or delay is caused by acts of God, public health emergencies, epidemics, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control ("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. If any such causes for delay are of such magnitude as to prevent the complete performance of the Contract within two (2) years of the originally scheduled completion date, either Party may by written notice request to amend or terminate the Contract. The suspension of any obligations under this section shall not cause the term of this Lease to be extended and shall not affect any rights accrued under this Lease prior to the occurrence of the force majeure. The Party giving notice of the force majeure shall also give notice of its cessation.

**23. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES:** The City may, in writing, and without invalidating the Contract, 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 Contract, 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 Contract. When changes are so ordered, no additional work shall be performed by the Consultant until a Contract amendment has been fully executed, unless written notice to proceed is issued by the City. Any claim for extension of time that may be necessitated as a result of extra work or additional services and changes shall be given consideration and evaluated insofar as it directly relates to the change.

- 24. FAILURE TO COMPLY WITH TIME SCHEDULE:** If the City is dissatisfied because of slow progress or incompetence in the performance of the Work in accordance with the schedule for completion of the various aspects of construction, the City shall give the Consultant written notice in which the City shall specify in detail the cause of dissatisfaction. Should the Consultant fail or refuse to remedy the matters complained of within five days after the written notice is received by the Contractor, the City shall have the right to take control of the Work and either make good the deficiencies of the Consultant itself or direct the activities of the Consultant in doing so, employing such additional help as the City deems advisable. In such events, the City shall be entitled to collect from the Consultant any expenses in completing the Work. In addition, the City may withhold from the amount payable to the Consultant an amount approximately equal to any interest lost or charges incurred by the City for each calendar day that the Consultant is in default after the time of completion stipulated in the Contract Documents.
- 25. RETURN OF MATERIALS:** Consultant agrees that at the expiration or termination of this Contract, it shall return to City all materials provided to it during its engagement on behalf of City.
- 26. 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. Any payment, however, final or otherwise, shall not release the Consultant or their sureties from any obligations under the Contract Documents or any performance or payment bond.
- 27. 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 Contract. 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 Contract without prior written approval of the City. No publications or publicity of the work, in part or in total, shall be made without the express written agreement of the City, except that Consultant may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.



- 28. PROPRIETARY RIGHTS:** The Parties under the Contract hereby mutually agree that, if patentable discoveries or inventions should result from work performed by the Consultants under the Contract, 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 any discovery or invention that may be developed as a part of the Work under the Contract.
- 29. 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.
- 30. RECORDS RETENTION AND ACCESS:** 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 Contract which are related to the City, at any time during this Contract 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 review and audit during the Contract period and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the City, if requested, 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 their representatives performing work related to the Contract, are responsible to ensure that all data and information created or stored on EDM is secure and can be duplicated and used if the EDM mechanism is subjected to power outage, obsolescence, or damage.
- 31. CONTRACT DISPUTES:** In the event of a dispute between the parties to this Contract each party will continue to perform its obligations unless the Contract is terminated in accordance with these terms.
- 32. SETTLEMENTS OF MISUNDERSTANDINGS:** To avoid misunderstandings and litigation, it is mutually agreed by all Parties that the [Head of Department] shall act as referee on all questions arising under the terms of the Contract and that the decision of the [Head of Department] in such cases shall be binding upon both Parties.





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

A. Termination for Convenience: At any time prior to completion of services specified under the Contract, the City may terminate the Contract for any reason by submitting written notice via certified or registered mail to the Consultant, not less than fifteen (15) days prior to the termination date, of its intention to do so. If the termination is for the City's convenience, payment to the Consultant will be made promptly for the amount of any fees earned to the date of the notice of termination and costs of materials obtained in preparation for Work but not yet installed or delivered, 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.

B. Termination for Cause:

i. Breach: Contractor shall be in default if Contractor fails in any manner to fully perform and carry out each and all conditions of this Contract, including, but not limited to, Contractor's failure to begin or to prosecute the Work in a timely manner or to make progress as to endanger performance of this Contract; failure to supply a sufficient number of properly skilled employees or a sufficient quantity of materials of proper quality; failure to perform the Work unsatisfactorily as determined by the City; failure to neglect or refuse to remove materials; or in the event of a breach of warranty with respect to any materials, workmanship, or performance guaranty. Contractor will not be in default for any excusable delays as provided in Sections 19-21.

The City may give Contractor written notice of such default. If Contractor does not cure such default or provide a plan to cure such default which is acceptable to the City within the time permitted by the City, then the City may terminate this contract for cause.

ii. Proceedings for Relief of Debtors: If a federal or state proceeding for relief of debtors is undertaken by or against Consultant, or if Consultant makes an assignment for the benefit of creditors, then the City may immediately terminate this contract.



- iii. Dishonest Conduct: If Consultant engages in any dishonest conduct related to the performance or administration of this Contract then the City may immediately terminate this contract.
- iv. Cover: In the event the City terminates this contract as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Consultant shall be liable to the City for all of its costs and damages, including, but not limited to, any excess costs for such services, interest, or other charges the City incurs to cover.
- v. Rights and Remedies Not Exclusive: The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**34. GENERAL COMPLIANCE WITH LAWS:** The Consultant and any subconsultant approved under this Contract shall comply with all applicable Federal, State and local laws, including but not limited to the Burlington Livable Wage Ordinance, the Non-Outsourcing Ordinance, and the Union-Deterrence Ordinance and shall provide the required certifications attesting to compliance with these ordinances (see attached ordinances and certifications).

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

**35. CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Contract, the Consultant will not discriminate against any employee or applicant for employment because of religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status, or genetic information. Consultant, and any subconsultants, 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.

**36. CHILD SUPPORT PAYMENTS:** By signing the Contract, the Consultant certifies, as of the date of signing the Contract, 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.

**37. TAX REQUIREMENTS:** By signing the Contract, 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 Contract.

**38. INDEMNIFICATION:**

- A. Indemnification by Consultant:** Except for the active negligence or willful misconduct of the **City**, or any of its boards, officers, agents, employees, assigns and successors in interest, **consultant** undertakes and agrees to defend, indemnify and hold harmless the **City** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **City**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by Consultant or its subconsultants of any tier.
- B. Notice of Claims & City's Right to Participate:** 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.
- C. City's Rights and Remedies:** Rights and remedies available to the **City** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States and the State of Vermont.
- D. No Indemnification by City:** 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.

**39. 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 Contract.



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

**41. TRANSFERS, SUBLETTING, ETC:** The Consultant shall not assign, sublet, or transfer any interest in the work, covered by this Contract, without prior written consent of the City, and further, if any 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 contract 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 Contract.

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

**42. 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 Contract, neither the Consultant nor its surviving members shall be relieved of their obligations to complete the Contract unless the City agrees to terminate the Contract because it determines that the Consultant is unable to satisfactorily execute the Contract.

**43. INTERPRETATION & IMPLEMENTATION:** Provisions of the Contract shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both Parties.

**44. ARM'S LENGTH:** This Contract 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 Consultant.

**45. 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 are 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 Contract 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.

- 46. CHOICE OF LAW:** Vermont law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. 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 Contract to the extent capable of execution.
- 47. JURISDICTION:** All suits or actions related to this Contract shall be filed and proceedings held in the State of Vermont.
- 48. BINDING EFFECT AND CONTINUITY:** This Contract 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 Contract during the resolution of the dispute, until the Contract is terminated in accordance with its terms.
- 49. SEVERABILITY:** The invalidity or unenforceability of any provision of this Contract, 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 Contract in accordance with the intent of this Contract.
- 50. ENTIRE CONTRACT & AGREEMENT:** This Contract constitutes the entire Contract, agreement, and understanding of the Parties with respect to the subject matter of this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.
- 51. 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 Contract.
- 52. NO THIRD PARTY BENEFICIARIES:** This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract 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 Contract are incidental to this Contract, and do not create any rights for such third parties.

**53. WAIVER:** A Party's failure or delay in exercising any right, power, or privilege under this Contract, 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.



**Exhibit E:**

Burlington Livable Wage Ordinance Certification



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

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:

Date \_\_\_\_\_

Notary





**Exhibit F:**  
Burlington Outsourcing Ordinance Certification





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

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 at \_\_\_\_\_, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
Duly Authorized Agent

Subscribed and sworn to before me: \_\_\_\_\_  
Notary



**Exhibit G:**

Burlington Union Deterrence Ordinance Certification



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

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

Dated at \_\_\_\_\_, Vermont this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_ Duly Authorized  
Agent