

CITY OF BURLINGTON
REQUEST FOR PROPOSALS
Oakledge Park Food Concessions

Issued: April 26, 2024

Due: May 13, 2024

I. PROJECT BACKGROUND

Oakledge Park, Burlington, VT 05401

Oakledge Park is a large park in Burlington's Southern end of town off of Flynn Ave. It contains 2 public beaches, Blanchard Beach & Oakledge Cove. Oakledge also boasts volleyball courts, Tennis courts, and Bocce ball courts. There are 2 Shelters that groups can rent as well as a fully inclusive playground.

The park has an active kickball league, SUP/kayak concessionaire and bocce club. The upper and lower shelters are popular rentals for personal and business events.

The concessionaire will have access to power for a food truck or cart, water (not direct hookup), and storage space. Storage space could be converted to kitchen at expense of renter. The concessionaire's area includes a covered space where the vendor could set up seating, but an open path must be maintained from the restrooms to the playground. The lower portion of the shelter area, closest to the beach, is a separate daily rental for the public.

The City ordinances allows alcohol at Oakledge Park.

II. SCOPE OF WORK

The Department of Parks, Recreation & Waterfront requests proposals from interested parties for a one year lease with a second year option at the City's sole discretion to provide food and alcohol concessions out of the upper portion of the lower shelter. Based off of concessionaire usage BPRW reserves the right to negotiate payment for electrical usage.

For the allowance to conduct business operations at Oakledge Park, the Department asks for a proposed compensation package of 10% of gross revenue receipts, monthly payments, with a minimum payment of \$2,000.00 annually.

III. RESPONSE FORMAT

Questions concerning this Request for Proposals (RFP) must be made via email to the point of contact below. Responses to all submitted questions will be posted at: <https://www.burlingtonvt.gov/RFP>.

Submit an electronic copy in PDF format of the bid via email to Burlington Parks, Recreation & Waterfront Department no later than May 13, 2024 by 4:00 p.m. Proposals are to be marked "City of

Burlington food concessions located at the Burlington Waterfront Oakledge Lower Pavilion”. Proposals submitted after the deadline date and time may not be accepted.

Questions concerning this RFP should be directed to Alec Kaeding and received by 4:00 P.M. May 3, 2024. All answers to questions (all names withheld) will be publicly posted on our website by 4:00 p.m. May 4, 2024 www.burlingtonvt.gov/rfp for all interested parties to see.

A site visit will be conducted if requested at the Oakledge site.

IV. CONCESSIONAIRE SELECTION

Proposals will be reviewed and evaluated by City staff based on the information provided. The Proposals will be rated according to the following criteria (Total of 60 points possible):

- A. Qualifications (20 points possible)
 - 1. Experience in providing vendor sales in an outdoor setting
- B. Cost (10 points possible)
 - 1. Compensation for the City of Burlington and Prices
- C. Hours (10 points possible)
 - 1. Commitment to hours as noted in the scope
 - 2. Identify any additional hours outside scope
- D. Returning Concessionaire (5 Points)
- E. Food & Retail Sales (15 points possible)
 - 1. Variety of Retail and Food Sales

Additional information may be requested prior to final selection. Final costs will be determined through negotiations with the selected party.

V. SUBMISSIONS

Proposals should be submitted via email to Alec Kaeding, Waterfront & Parks Operations Manager, Department of Parks, Recreation & Waterfront, akaeding@burlingtonvt.gov.

- A. **Cover letter:** This will set the vision for the proposed experience. Please include a statement of understanding & approach to this operation;
- B. **Proposed Owner and Operator:** Clearly indicate the applicant’s designated owner, manager, as well as any co-owner or investor who will be assigned to the work and their respective expertise in such work. Please detail the type of ownership, as well as the name and location of parent company and subsidiaries, if any;
- C. **Specific Experience:** Descriptions detailing completed, similar, or relevant experience that the applicant, co-applicant, and/or investor has executed. Relevant information of previous locations, type of equipment, and other relevant experience to a fast-paced seasonal operation is preferred. Links to similar or relevant operations are encouraged;

- D. **List of References:** Provide a minimum of two references for whom the applicant has provided similar 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.
- E. **Pricing:** Please provide a list of detailed costs associated with this RFP & hours you are committed to work.
- F. Signed Livable Wage with the Proposals, Exhibits D
- G. Documentation of prior food and alcohol sales from the State of Vermont.

No proposal will be considered accepted until all necessary City authorizations, including those required by Board of Finance and City Council if necessary, have been received and an agreement is executed by both parties.

VI. EXHIBITS

- A. Exhibit A: [MAP OF LEASED PREMISES]
- B. Exhibit B: [CONTRACTOR PROPOSAL FORM]
- C. Exhibit C: Draft Lease
- D. Exhibit E: Burlington Livable Wage Ordinance Certification
- E. Exhibit F: Burlington Outsourcing Ordinance Certification
- F. Exhibit G: Burlington Union Deterrence Ordinance Certification

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

VII. CONTRACTING

The selected Concessionaire must qualify as an independent contractor 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 Contract Conditions. The certificate of insurance coverage shall be documented on forms acceptable to the City.

VIII. 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 Contract Conditions and the attached Draft Agreement. No proposal will be considered accepted until all necessary City

authorizations—including those required by Board of Finance and City Council if necessary—have been received and an agreement is executed by both parties.

IX. LIMITATIONS OF LIABILITY

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

X. 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.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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 bid documents, including but not limited to unit prices and rate calculations, the bidder shall immediately give the City written notice thereof. Concessionaire 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 Concessionaire may proceed without any modification being made to the bid or contract documents.

XV. 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.

XVI. 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. Concessionaire 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
- 2) A schedule for possible updates to the plan in advance of the start of work); 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 Concessionaire 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 will be excusable, but will not be compensable.

Exhibit A: Maps

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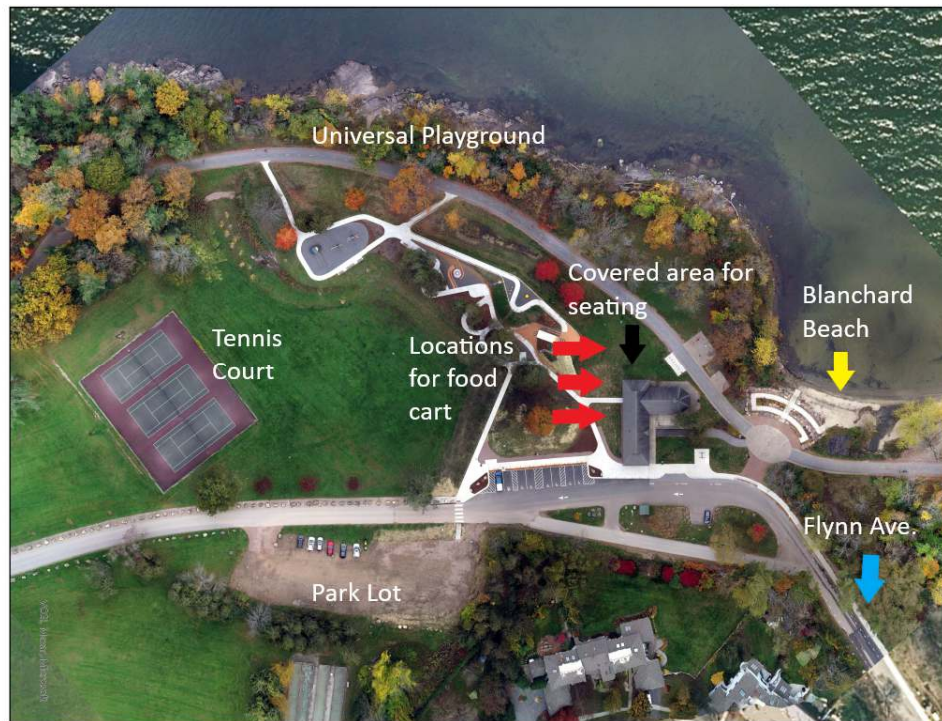


Exhibit B: Contractor Proposal Form

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Exhibit C: Draft Lease

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CITY OF BURLINGTON

LEASE AGREEMENT

WITH

[LESSEE'S NAME]

This Lease Agreement ("Lease") is entered into by and between the City of Burlington, acting by and through **[DEPARTMENT]** ("City"), and **[LESSEE'S NAME]** ("Lessee"), a Vermont corporation authorized to do business in the State of Vermont with a principal place of business at **[LESSEE'S ADDRESS]**. The City and Lessee agree to the terms and conditions of this Lease.

1. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Lease shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Lease before the Effective Date and unless otherwise agreed to in writing, shall have no obligations for performance or expenses incurred before the Effective Date or after the expiration or termination of this Lease.

2. RECITALS

- A. Authority.** Authority to enter into this Lease exists in the City Charter. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Lease.
- C. Purpose.** The City owns and operates **[GENERAL AREA]** in Burlington, Vermont. The City and Lessee wish to enter into an agreement leasing certain portions of the **[DEPARTMENT'S]** premises to Lessee to further and carry out the purposes of the operation of the **[DEPARTMENT]**. This Lease establishes the conditions and terms of Lessee's use of the Leased Premises.
- D. References.** All references in this Lease to sections (whether spelled out or using the § symbol), subsections, exhibits, or other attachments, are references to sections subsections, exhibits, or other attachments contained herein or incorporated as part of this Lease, unless otherwise noted.

3. DEFINITIONS

- A. "Leased Premises"** means the City-owned building and ground space known and numbered as **[PROPERTY ADDRESS]**, Suite **[NUMBER]** in Burlington, Vermont, which consists of approximately **[NUMBER]** square feet of building space. A description and map of the Leased Premises are included as Attachment A.

- B. **“Effective Date”** means the date on which this Lease is approved and signed by the City, as shown on the signature page of this Lease.
- C. **“Hazardous Substance”** means and includes, but shall not be limited to, any element, substance, compound or mixture, including disease-causing agents, which after release into the environment or work place and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction or physical deformations in such organisms or their offspring, and all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), or any other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, CERCLA, and regulations adopted pursuant to such Acts, the Toxic Substances Control Act of 1976, as heretofore or currently in effect (“TSCA”) and the Resource Conservation and Recovery Act of 1976, as heretofore or currently in effect (“RCRA”).
- D. **“Lease”** means this Lease Agreement, its terms and conditions, attachments, and documents incorporated by reference under the terms of this Lease.
- E. **“Party”** means the City or Lessee and **“Parties”** means the City and Lessee.
- F. **“Termination Event”** means any event described in Section 16.B.i. (Termination by the City – Breach)

4. TERM AND RENEWAL TERM(S)

- A. **Initial Term.** This Lease and the Parties’ respective performance shall commence on the Effective Date and expire on [DATE].
- B. **Renewal Term(s).** Upon mutual agreement of the Parties, this Lease may be extended for an additional one-year renewal term. As a condition of a possible renewal term, Lessee must provide written notice to the City of its intent to seek renewal, doing so at least 60 days’ in advance of the last day of the initial term. A renewal term shall commence upon the expiration of either the initial term, and shall be upon the same terms contained herein.

5. LEASE—USES AND PURPOSES

The City hereby leases to Lessee for its exclusive use the right to access and occupy the Leased Premises, subject to the terms of this Lease and the following conditions:

- A. **Use.** Unless otherwise approved in writing by the City, Lessee shall use and occupy the Leased Premises for its [BRIEF DESCRIPTION OF OPERATIONS] operations.
- B. **Upkeep and Utilities.** Lessee shall furnish to the Leased Premises and pay all charges for telephone

service, sewage service, stormwater, trash and/or hazardous waste removal, janitorial service, water, electric power, heat, gas, air conditioning and other utilities of every kind.

- C. Condition.** Lessee shall keep and maintain all parts of the Leased Premises—including related and associated appurtenances—in good condition, order and repair during the term of this Lease. Such actions include but are not limited to: painting, lighting, removal of ground side snow and garbage, landscaping, replacement of broken glass with glass the same size and quality of that broken, and utility services.
- D. Sublease.** Lessee shall not sublease any portion of the Leased Premises without the express prior written approval of the City. If such approval is obtained during the term of this Lease, then Lessee shall cooperate with other occupants of the building in which the Leased Premises is located so that any common facilities shall at all times be kept and maintained in a clean, orderly and sanitary manner. Lessee may share in an equitable manner with the other occupants the expenses of maintaining said common facilities. If the common facilities are not kept and maintained in a clean, orderly, and sanitary manner, the City shall have the right, in its sole discretion, to assume such obligation and charge the full expenses thereof to Lessee. All maintenance shall be subject to general monitoring by the City to ensure a continuing high quality of appearance commensurate with maintenance and safety standards of the [DEPARTMENT].
- E. Compliance with Law.** Lessee shall observe and comply with any and all present and future requirements of the constituted public authority and with all federal, state, or local statutes, ordinances, regulations, standards, conditions, and agreements applicable to Lessee for its use of the Leased Premises, including, but not limited to, ordinances, rules and regulations promulgated from time to time by or at the direction of the City for the administration of the [DEPARTMENT]. Further, Lessee shall—at its own expense—submit to and comply with the requirements of all state and federal regulatory agencies or municipal boards having jurisdiction over the construction of any fixed improvements on the Leased Premises, including, but not limited to, any Environmental Board or Board of Health.
- F. ADA.** Lessee shall—at its own expense—comply with the standards for accessible design known as the Americans with Disabilities Act (“ADA”) Accessibility Guidelines in connection with any new construction or alteration of the Leased Premises. Lessee shall bear the burden of this obligation regardless of whether any such Agency or Board shall require that the City be the applicant of record.
- G. Waste and Nuisance.** Lessee shall not make any actionable waste or nuisance upon the Leased Premises and shall not do or permit to be done anything which may result in the creation, commission, or maintenance of any such waste or nuisance on said premises or the [DEPARTMENT]. Lessee shall properly handle, remove, and dispose of any and all lubricants and/or hazardous waste and maintain the Leased Premises in a clean and safe condition.
- H. Improvements.** Should Lessee desire to make infrastructure and Lessee-specific modifications or improvements to the Leased Premises, Lessee shall obtain advanced written approval by the City. Lessee shall be solely responsible for all costs associated with improvements without reimbursement or further consideration from the City. All approved additions or improvements must comply with the standards for accessible design known as the Americans with Disabilities Act Accessibility Guidelines and shall, on expiration or termination of this Lease, belong to the City without compensation to Lessee.
- I. Supervision.** Lessee shall ensure that the management, maintenance, and operation of the Leased Premises shall at all times be under the supervision and direction of an active, qualified, competent

representative of Lessee, and Lessee shall identify its representative, and any successor, in writing to the City.

6. RENT

Lessee shall, in accordance with the provisions of this section, pay the City rent and other amounts due hereunder in the amounts and using the methods set forth below:

- A. Leased Space Rent.** Lessee shall pay the City rent for access and use of the Leased Premises at a rate of [WRITTEN AMOUNT] (\$[NUMBER]) per month, which represents approximately \$[NUMBER] per square foot per month for the [NUMBER] square feet of first floor rental space at [PROPERTY ADDRESS] Suite [NUMBER], and an additional \$[NUMBER] per square foot per month for the use of the [NUMBER] square feet of upstairs mezzanine space. This Leased Space rent shall be adjusted annually to reflect increases in the cost of living as reflected in the Consumer Price Index for all Cities, all Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor or equivalent replacement index or an increase of 3%, whichever is higher. In no event shall the annual rental rate be less than the immediately preceding rate.
- B. Time for Payment.** Lessee shall make the rental payment due under this §6 on or before the first day of each calendar month during the term of this Lease. Payment shall be made to:

[CONTACT'S NAME]

[CONTACT'S ADDRESS]

[CONTACT'S PHONE]

[CONTACT'S EMAIL]

- C. Electronic Payment.** The City shall have the right, on not less than thirty (30) days prior written notice to Lessee (the "Electronic Payment Notice"), to require Lessee to make subsequent payments of monthly rent, any additional back rent, and other monies due pursuant to the terms of this Lease by means of electronic funds transfer determined by the City in its sole and absolute discretion (the "Electronic Payment"). The Electronic Payment Notice shall set forth the proper bank ABA number, account number and designation of the account to which such Electronic Payment shall be made. Lessee shall promptly notify the City in writing of any additional information that will be required to establish and maintain Electronic Payment from Lessee's bank or financial institution. The City shall have the right, after at least ten (10) days prior written notice to Lessee, to change the name of the depository for receipt of any Electronic Payment and to discontinue payment of any sum by Electronic Payment."
- D. Late Payment.** Any required payment which has not been paid when due shall incur interest at the rate of 1.5% per month.

7. CITY OBLIGATIONS

- A. Access.** The City shall ensure reasonable ingress and egress to and from the Leased Premises.

B. Snow Removal. The City shall provide for snow removal from access roads.

8. ENTRY OF LEASED PREMISES

The City and its authorized officers, employees, agents, contractors, sub-contractors and other representatives shall have the right to enter upon the Leased Premises for the following purposes:

- A. Inspection.** To inspect the Leased Premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Lessee has complied and is complying with the terms and conditions of this Lease. Lessee shall provide the Director of [DEPARTMENT] with serviceable keys to all of its facilities to permit the exercise of the City's rights hereunder; or
- B. Facilities.** To perform essential maintenance, repair, relocation or removal of existing underground or overhead wires, pipes, drains, cables and conduits now located on or across the Leased Premises, and to construct, maintain, repair, relocate and remove such facilities in the future if necessary to carry out the master plan of development of the [DEPARTMENT] provided, however, that said work shall in no event disrupt or unduly interfere with the operations of Lessee. Nothing herein shall be construed to impose upon the City any obligations to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure to do so. Lessee is and shall be in exclusive possession of the Leased Premises and the City shall not, in any event, be liable for any damage to the premises or any property of Lessee or any other persons located in or thereupon, other than to repair or remedy such damage as may be occasioned by negligence of the City, its employees or agents.

9. TAXES AND ASSESSMENTS

- A. Direct Tax.** Lessee shall pay directly to the taxing authority any and all personal property inventory taxes or assessments which may be assessed against the Leased Premises and its contents during the term hereof or any renewal term.

10. INSURANCE

Prior to the Effective Date of this Lease, Lessee shall obtain insurance coverage meeting each requirement and condition set forth in this §10.

- A. Carrier.** Lessee shall obtain 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 VIII or better by the latest *Best Insurance Report*, or has an analogous rating from a comparable rating service approved by the City.
- B. Certificate of Insurance.** Proof of insurance and compliance with all requirements in this §10 should be evidenced on a certificate of insurance acceptable to the City. The certificate shall, at a minimum, contain the following: (1) authorized agent information; (2) insured information; (3) insurance company information; (4) description of policies, including coverage types and amounts; (5) policy number(s) and period(s); (6) limits of liability; (7) City information as additional insured and certificate holder; and (8)

cancellation information. The certificate of insurance must be received by the City prior to the Effective Date of this Lease.

- C. Additional Insured.** Each required insurance policy as it relates to the buildings and lands covered by this Lease (with the specific exception of professional liability and workers compensation) shall name the City as an additional insured and loss payee.
- D. Cancellation.** All certificates shall contain a provision stating that the coverages afforded under said policies will not be cancelled, materially changed, or not renewed without at least thirty (30) days written prior notice to the City, or fifteen (15) days for non-payment. The policies shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives, and shall contain a clause to the effect that such policies and the coverage evidenced thereby shall be primary with respect to any policies carried by the City, and that any coverage carried by the City shall be excess insurance. In no event shall the limits of said policies be considered as limiting the liability of Lessee under Lease.
- E. Insurance Coverages.** During the Term, Lessee agrees to purchase and maintain the following types of insurance coverages, consistent with the policies and requirements of the City, and provide evidence of continuing coverage to the City:

- (i) Commercial General Liability Insurance.** Lessee shall procure Commercial General Liability Insurance, on an occurrence form, providing all major divisions of coverage, including but not limited to: (1) Premises Operations; (2) Products and Completed Operations; (3) Personal Injury and Advertising liability; and (4) Fire Legal Liability. The Commercial General Liability Insurance shall provide the following minimum limits:

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

- (ii) Workers' Compensation/Employers' Liability Insurance.** Lessee shall provide Workers' Compensation coverage in accordance with the statutory limits as established by the State of Vermont and with a minimum limit for employer's liability no lower than the following: Bodily Injury by Accident - \$500,000 each accident; Bodily Injury by Disease - \$500,000 each employee. Lessee shall require all contractors and subcontractors performing work or occupying the Leased Premises under this Lease to obtain an insurance certificate showing proof of Workers' Compensation coverages and Lessee shall require from its general contractor(s) that all subcontractors submit certificates of such insurance to the City prior to performing work or occupying the Leased Premises.

(iii) Commercial Business Automobile Liability Insurance. Lessee shall provide Commercial Business Automobile Liability Insurance, which shall include coverage for bodily injury and property damage liability arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each accident.

- F. Application to Others.** Lessee shall require all contractors, subcontractors, agents, or workers performing work or occupying the Leased Premises to obtain an insurance coverage meeting the requirements of this **§10** as evidence on a certificate of insurance. Lessee shall require that all such persons submit certificates of such insurance to the City prior to performing work or occupying the Leased Premises.
- G. Maintaining Coverage.** The City may require copies of any insurance policies entered into by Lessee, and Lessee is responsible for annually verifying and confirming in writing to the City that all sub-contractors, agents, operators or workers meet the minimum coverage and limits plus maintain current certificates of coverage, and that all work activities related to this Lease shall meet minimum coverage and limits, with any sub-contractors, agents, operators or workers complying with the same insurance requirements as Lessee.
- H. Continuing Obligation.** Unless otherwise expressly provided herein, the obligation to insure as provided herein continues throughout the term of this Lease and shall not terminate until this Lease has expired or been terminated, and the right to occupy the Leased Premises is returned to the City.
- I. Waiver of Subrogation.** The City and Tenant shall have no liability to one another, or to any insurer, by way of subrogation or otherwise, on account of any loss or damage to their respective property, the Premises or its contents, the Building or the Project, regardless of whether such loss or damage is caused by the negligence of the City or Tenant, arising out of any of the perils or casualties insured against by the property insurance policies carried, or required to be carried, by the parties pursuant to this Lease. The insurance policies obtained by the City and Tenant pursuant to this Lease shall permit waivers of subrogation which the insurer may otherwise have against the non-insuring party. In the event the policy or policies do not allow waiver of subrogation prior to loss, either the City or Tenant shall, at the request of the other party, deliver to the requesting party a waiver of subrogation endorsement in such form and content as may reasonably be required by the requesting party or its insurer.

11. INDEMNIFICATION & LIABILITY

- A. Indemnification.** *Lessee shall indemnify, defend, and hold harmless the City, its officers, agents and employees, including the City of Burlington [COMMISSION], their successors and assigns, individually or collectively, from and against all liability and any claims, suits, expenses, losses, judgments, proceedings, damages, expenses, demands, suits, costs (including costs of defense, reasonable attorney fees, and reasonable professional fees incurred in defense or incurred in enforcement of this indemnity), and causes of action, including but not limited to, claims arising out of or in connection to the following:*

- 1. This Lease;**

2. *The Leased Premises;*
3. *Actions on the Leased Premises;*
4. *Lessee's possession, use, occupation, or control of the Leased Premises ;*
5. *Actions or omissions of the Lessee, its agents, employees, licensees, visitors, or contractors;*
6. *Breach or default of this Lease by Lessee, its agents, employees, licensees, or contractors.*

Lessee shall give prompt and timely notice to the City (and copying the Burlington City Attorney's Office) of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or may affect the City, the Leased Premises, or the [DEPARTMENT].

Lessee shall reimburse the City for costs associated with violations issued by state and federal regulatory authorities resulting from Lessee's misconduct, incompetence, or negligence as determined by the City.

- B. *Liability. The City shall not be liable to the Lessee, any assignees claiming by, through, or under Lessee, any subtenants claiming, by, through, or under Lessee, and any of their respective agents, contractors, employees, and invitees, for any injury to or death of any person or persons or the damage to or theft, destruction, loss, or loss of use of any property or inconvenience (collectively and individually a "loss") caused by casualty, theft, fire, third parties, repair, or failure to repair, or alteration of any part of this building, or any other cause, unless due to the negligence or willful misconduct of any indemnified party, in whole or in part.*

12. HAZARDOUS WASTES

- A. **Disposal.** Lessee shall properly handle, remove, and dispose of any and all lubricants, grease, and/or hazardous waste and shall maintain the Leased Premises in a clean and safe condition.
- B. **Hold Harmless.** Lessee shall indemnify, defend, and hold harmless the City, its officers, and employees from and against all loss, cost and expense (including, without limitation, attorney fees) of whatever nature suffered or incurred by the City on account of the existence, release, or discharge of Hazardous Substances on or from the Leased Premises including, without limitation, any claims, costs, losses, liabilities, and expenses arising from the violation (or claimed violation) of any environmental laws or the institution of any action by any party against the City or the Leased Premises based upon nuisance, negligence or other tort theory alleging liability due to the improper generation, storage, disposal, removal, transportation or treatment of Hazardous Substances or the imposition of a lien on any part of the Leased Premises under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended ("CERCLA"), or any other laws pursuant to which a lien may be imposed due to the existence of Hazardous Substances. Lessee further unconditionally, absolutely, and irrevocably guarantees the payment of any fees and expenses incurred by the City in enforcing or seeking enforcement of the liability of Lessee under this indemnification.

13. WARRANTIES AND REPRESENTATIONS

- A. Regarding the Leased Premises.** The City represents that it is the owner of the Leased Premises or the authorized representative or agent of said owner. During the terms of this Lease, the City represents and warrants that the Lessee may have, hold, and enjoy peaceful and uninterrupted possession of the Leased Premises and rights herein leased and granted, subject to performance by Lessee of its obligations herein.
- B. Regarding Legal Authority.** Lessee warrants that it possesses the legal authority to enter into this Lease and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Lease and to bind Lessee to its terms. The person signing and executing this Lease on behalf of Lessee hereby represents, warrants, and, guarantees that they have full authorization to do so. If requested by the City, Lessee shall provide the City with proof of Lessee's authority to enter into this Lease within 15 days of receiving such a request.

14. CASUALTY

If the Leased Premises are damaged by fire, flood, or another casualty, either Party may terminate this Lease within 30 days of the date the terminating Party becomes aware of such occurrence if, in the opinion of the terminating Party, the Leased Premises have been so damaged as to render them wholly or partially untenable or unfit for the Lessee's purposes. If so elected, the terminating Party shall give the other Party written notice to the City and termination shall be effective 30 days from the date of mailing of the notice of termination.

If the Parties elect not to terminate this Lease, the City shall reasonably estimate the time, restoration work, and commencement date that the City reasonably anticipates is required for the performance of restoration work. Lessee's obligation to pay rent shall equitably and proportionately abate with respect to the damaged portion of the Leased Premises from the date of damage until restoration is sufficiently complete to enable Lessee to recommence its use and occupancy of the Leased Premises for the purposes set forth in this Lease.

15. TITLE TO IMPROVEMENTS

Upon the expiration or termination of this Lease, all permanently fixed improvements made upon the Leased Premises by Lessee shall become a part of the realty and remain on the Leased Premises as the property of the City. Lessee shall not be entitled to compensation of any kind for such improvements nor shall the City be required to provide Lessee with any consideration of any kind for such improvements.

16. TERMINATION

In addition to the termination rights granted in other sections of this Lease, the Parties may terminate this Lease in accordance with this §16.

A. Breach. The failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

B. Termination by the City.

(i) Breach. The City may terminate this Lease, if Lessee fails to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, including, but not limited to, the following conditions:

- a. Past Due.** If Lessee fails to pay required rental charges or money payments more than thirty (30) days after a due date.
- b. Abandonment.** If Lessee or any approved sub-lessee voluntarily abandons or discontinues the conduct and operation of its service at the [AREA NAME] for a continuous period of sixty (60) days.
- c. Bankruptcy.** The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Lessee, or the appointment of a receiver or similar officer for Lessee or any of its property, which is not vacated or fully stayed within twenty (20) days after the institution or occurrence thereof, shall constitute a breach.
- d. Public safety.** If terminating the lease is reasonably necessary to preserve public safety or to prevent an immediate public crisis.

(ii) Notice and Cure Period. In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within thirty (30) days, or if a cure of the breach has not begun within 30 days and pursued with due diligence, the non-breaching Party may terminate this Lease by sending a notice of termination, which shall be effective thirty (30) days after the notice of termination is sent. Notwithstanding anything to the contrary herein, the City, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Lease in whole or in part if reasonably necessary to preserve public safety or to prevent an immediate public crisis.

(iii) Repeated Breaches. If the same Termination Event has occurred on four separate occasions during any rolling 12-month period (having been duly remedied or waived on each occasion), a cure period for remedying the next occurrence of such Termination Event occurring within the relevant 12-month rolling period will only be available if City so permits in its sole discretion.

(iv) 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.

C. Termination by Lessee. Lessee may terminate this Lease upon thirty (30) days' advance written notice to the City under the following conditions:

- (i) **Injunction.** The issuance by any court of competent jurisdiction of an injunction, order, or decree preventing or restraining the use by Lessee of all or any substantial part of the Leased Premises or preventing or restraining the use of the [AREA NAME] for usual [DEPARTMENT] purposes in its entirety, or the use of any part thereof which may be used by Lessee and which is necessary for Lessee's operations on the [AREA NAME], which remains in force, unvacated or unstayed for a period of at least sixty (60) days.

D. Damage to Improvements. Either Party may terminate this Lease upon providing thirty (30) days' written notice to the other Party if the fixed improvements upon the Leased Premises are so totally destroyed or so extensively damaged that it would be impracticable or uneconomical to restore the same to their previous condition.

17. CONDITION ON TERMINATION

At the termination or expiration of this Lease, Lessee shall surrender and deliver the Leased Premises in as substantially good order and condition as exists at the inception hereof; excepting, however, loss by fire, inevitable accident, act of God, and ordinary wear and tear.

18. LIENS

Lessee shall cause to be removed any and all mechanic's or materialman's liens of any nature arising out of or because of any construction performed by Lessee upon the Leased Premises or arising out of or because of the performance of any work or labor upon or the furnishing of any materials for use at the Leased Premises, by or at the direction of Lessee within a reasonable time not to exceed six (6) months from the completion of any such construction.

19. HOLDING OVER

In the event Lessee shall hold over and remain in possession of the Leased Premises after cancellation or termination of this Lease, such holding over shall not be deemed to operate as a renewal or extension of this Lease, but rather shall only create a tenancy from month-to-month which the City may terminate at any time upon thirty (30) days' advance written notice.

20. FORCE MAJEURE

Neither Party shall be deemed to have breached this Lease if it is prevented from performing any of its obligations hereunder by reason of acts of God, 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, and the Party experiencing force majeure gives written notice

to the other party identifying the nature of such force majeure, and when it began. The Party experiencing force majeure shall take immediate action to attempt to remove such causes of force majeure as may occur from time to time and its operations under this Lease shall be resumed immediately after such cause has been removed, provided that neither Party shall be required to settle any labor dispute except upon terms that the Party deems acceptable. 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.

21. PUBLIC EMERGENCIES

Lessee must comply with all local, state, federal orders, directives, regulations, guidance, advisories during public emergencies. Public emergencies include, but are not limited to, national, state and local security emergencies; public health emergencies and pandemics; evacuations; chemical spills; shelter-in-place alerts; severe weather advisories; boil water advisories; and roadway interruptions. A Lessee's failure to comply with any local, state, federal orders, directives, regulations, guidance, or advisories during a public emergency shall constitute a breach of the Lease pursuant to Section 17 (Termination). The City shall have sole discretion in determining if Lessee is compliant with the above. If a public emergency is declared, the City will not be responsible for any expenses or losses incurred as a result of any public emergency.

22. DISPUTE RESOLUTION

The Parties shall make their designation representative available to meet within a reasonable time to discuss issues relating to the Lease or the Leased Premises. Each Party shall take such actions as reasonably necessary to address any issues within a reasonable time.

Either Party may enforce this Lease and/or seek appropriate remedies in Chittenden Superior Court under the laws of the State of Vermont.

23. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

For the City: [CONTACT'S NAME]

[CONTACT'S ADDRESS]

[CONTACT'S PHONE]

[CONTACT'S EMAIL]

For Lessee: [CONTACT'S NAME]

[CONTACT'S ADDRESS]

[CONTACT'S PHONE]

[CONTACT'S EMAIL]

24. GENERAL CIVIL RIGHTS PROVISIONS

Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used, or possessed by the Lessee. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

25. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this Lease, the Lessee, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** The Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the

contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

26. FEDERAL CIVIL RIGHTS PROVISION

No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of property and facilities made available or leased to Lessee; the construction of any improvements on, over, or under said property and facilities; or the furnishing of services thereon. Lessee shall comply with the Nondiscrimination Acts and Authorities as set out below and as they may be amended from time to time.

A. The Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities such that no person on the grounds of race, color, or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. In all solicitations, either by competitive bidding, or negotiation made by Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier shall be notified by Lessee of Lessee's obligations under this Agreement and the Nondiscrimination Acts and Authorities.

C. In the event of breach of any of the above non-discrimination covenants, the City shall have the right to terminate the Agreement and re-enter and repossess the underlying property and facilities and hold the same as if the Agreement had never been made or issued.

D. During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- iv. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- v. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- vi. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- vii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- viii. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- ix. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- x. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

27. FEDERAL REQUIREMENTS FOR CONSTRUCTION ACTIVITIES

Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Lessee will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts and Authorities.

With respect to Lessee, in the event of breach of any of the above nondiscrimination covenants, the City will have the right to terminate this Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said this Agreement had never been made or issued.

28. LIVABLE WAGE

The City has in effect a livable wage ordinance. This livable wage ordinance is applicable to service contracts with the City (as opposed to the purchasing of goods) where the total amount of the contract or contracts with the same person or entity exceeds \$15,000 for any twelve-month period.

Lessee shall comply with the livable wage ordinance to the extent that it is a covered employer under the ordinance and the ordinance is otherwise applicable. Lessee shall also require any contractors or agents performing work at the Leased Premises to comply with the livable wage ordinance.

29. RECORDING LEASE

This Lease is not being recorded. However, the Parties expressly agree to, at the request of either Party, execute a short-form notice of Lease complying with the terms of 27 V.S.A. § 341(c) which may be recorded by either the City or Lessee.

30. MORTGAGES

At the option of the City, this Lease shall be subordinate to any mortgage or other security interest by the City which from time to time may encumber all or part of Leased Premises so long as the City's lender shall agree in writing in a form reasonably acceptable to Lessee that such lender will not disturb Lessee's possession and rights under Lease so long as Lessee remains in compliance with Lease.

31. ESTOPPEL CERTIFICATE

Each Party shall—within thirty (30) business days after request by the other Party—execute and deliver to the requesting Party, or the party designated by the requesting Party, a statement certifying: (i) that Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications, and that the modified Lease is in full force and effect); (ii) whether, to the responding Party's knowledge, either Party is in default in performance of any of its obligations under Lease, and, if so, specifying each default; and (iii) any other information reasonably requested concerning Lease.

32. BROKER COMMISSIONS

The City shall have no obligation to pay any real estate commissions to any agents or brokers claiming by or through Lessee, and Lessee agrees to indemnify and hold harmless the City for all claims or demands of any other real estate agent or broker claiming by, through, or under Lessee. This indemnification shall also include payment of costs and attorney fees incurred by the City in defense of a claim for such real estate commissions or fees.

33. GENERAL PROVISIONS

- A. Assignment.** Lessee shall not assign this Lease or sublet any part of the Leased Premises without the expressed written consent of the City.
- B. Binding Effect.** All provisions of this Lease, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.
- C. Captions.** The captions and headings in this Lease are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.
- D. Counterparts.** This Lease may be executed in multiple identical counterparts, all of which shall constitute one agreement.
- E. Entire Understanding.** This Lease represents the complete integration of all understandings between the Parties and all prior representations and understandings—oral or written—are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.
- F. Extinguishment and Replacement.** This Lease extinguishes and replaces any prior leases between the Parties related to the Leased Premises upon the Effective Date hereof.
- G. Modification.** Modifications of this Lease shall not be effective unless agreed to in writing by both Parties in a formal written amendment to this Lease, properly executed and approved by both Parties.
- H. Interpretation.** The language in all parts of this Lease shall in all cases be construed simply according to its fair meaning and not strictly construed against the City. This Lease shall be construed and performance thereof shall be determined in accordance with the laws of the State of Vermont.

- I. **Severability.** Provided this Lease can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable, and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.
- J. **Survival of Certain Lease Terms.** Notwithstanding anything herein to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after expiration or termination shall survive such expiration or termination and shall be enforceable by the City if Lessee fails to perform or comply as required.
- K. **Third Party Beneficiaries.** Enforcement of this Lease and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease and do not create any rights for such third parties.
- L. **Waiver.** No acceptance by the City of rentals, fees, charges or other payments in whole or in part, for any period or periods after a default of any of the terms, covenants, and conditions hereof, to be performed, kept or observed by Lessee, shall be deemed a waiver of any right on the part of the City to terminate this Lease. A waiver by the City of any breach of a term, provision, or requirement of this Lease or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.
- M. **Public Records.** 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 the City. All records considered to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, shall be identified by Lessee, as shall all other records considered to be exempt under the Act. It is not sufficient to merely state generally that a document or record is proprietary, a trade secret, or otherwise exempt. Particular records, pages, or sections that 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.
- N. **Illegal Substance.** Lessee, Lessee's employees, and Lessee's patrons are prohibited from possessing, using, transporting, cultivating, selling, growing, or donating any substance prohibited under local, state, or federal law, including but not limited to marijuana.

34. ATTACHMENTS

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

- A. **Attachment A:** Leased Premises Description and Map
- B. **Attachment B:** [PROPERTY NAME] Rules & Regulations
- C. **Attachment C:** Certificate of Insurance

— *Signature Pages to Follow* —

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35. SIGNATURE PAGE 1.

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

The Parties hereto have executed this Lease Agreement

LESSEE

[LESSEE'S NAME]

[LESSEE'S ADDRESS (PRINCIPLE PLACE OF BUSINESS)]

By: _____

Name: _____

Title: _____

Date: _____

State of Vermont, County of _____. This record was acknowledged before me on _____(date) by _____ (authorized signatory's name).

Signature of Notary Public: _____

Stamp or certificate number: _____

Title of office: _____

My commission expires: _____

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36. SIGNATURE PAGE 2.

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

The Parties hereto have executed this Lease Agreement

City of Burlington

149 Church Street, Burlington, Vermont 05401

By: _____

Name: _____

Title: Mayor of the City of Burlington, Vermont

Date: _____

State of Vermont, County of _____. This record was acknowledged before me on _____ (date) by _____ (authorized signatory's name).

Signature of Notary Public: _____

Stamp or certificate number: _____

Title of office: _____

My commission expires: _____

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ATTACHMENT A

Leased Premises Description[s] and Map[s]

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ATTACHMENT B

[PROPERTY NAME]

RULES & REGULATIONS

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DRAFT

[PROPERTY NAME]

RULES & REGULATIONS

1. These Rules and Regulations are in addition to and shall not be construed to in any way modify or amend, in whole or in part, the agreements, covenants, conditions, and provisions of the Lease.
2. The City reserves the right to waive any one of these rules or regulations, and/or as to any particular tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such tenant.
3. The City reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the building and its occupants. The City shall provide Lessee with copies of any new and/or modified rules or regulations prior to the effective date thereof. Lessee agrees to abide by these and such other rules and regulations.
4. The City shall have exclusive control over the entrances, corridors, passages, and stairways. The entrances, corridors, passages, and stairways shall not be obstructed, or used by the Lessee for any other purpose than ingress and egress to and from the Leased Premises; and the City shall have the right to control ingress and egress to and from the building at all times.
5. The City reserves the right to refuse access to any persons the City in good faith judges to be a threat to the safety or property of the building and/or its occupants.
6. The Lessee shall not make or permit any noise or odors that annoy or interfere with other tenants or persons having business within the building.
7. The Lessee shall not interfere in any way with other tenants or those having business in the building.
8. The Lessee shall not make, suffer, or permit litter, except in appropriate receptacles for that purpose.
9. The Lessee assumes all risks from theft or vandalism to the Leased Premises and agrees to keep the Leased Premises locked as may be required.
10. The Lessee shall not place any additional locks upon any doors of the Leased Premises without first obtaining written consent of the City. The Lessee will not permit any duplicate keys to be made, unless to be given to the City. If more than two keys for any door are desired, the additional number shall be paid for by the Lessee. Upon termination of this Lease, the Lessee shall surrender all keys to the Leased Premises and the building and shall give to the City the combination of all locks on any vaults and safes.
11. The Lessee shall be responsible for the inappropriate use of any toilet rooms, plumbing, or other utilities. No foreign substances of any kind are to be inserted therein. The expense of any repair caused by the Lessee or the Lessee's employees' misuse of the facilities is the responsibility of the Lessee.

12. The Lessee shall not deface the walls, partitions, or other surfaces of the Leased Premises or the building.
13. The Lessee shall not suffer or permit anything in or around the Leased Premises that causes excessive vibration or floor loading in any part of the building.
14. The Lessee shall move furniture, significant freight, and equipment into or out of the building only with the City's knowledge and consent, and subject to such reasonable limitations, techniques and timing, as may be designated by the City. The Lessee shall be responsible for any damage to the Leased Premises and building arising from any such activity.
15. The Lessee shall not employ any service or contractor for services or work to be performed in the building, except as approved by the City.
16. The Lessee shall not install or use any window coverings, shades, or awnings, except as approved by the City and with the City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.
17. The Lessee shall not be permitted, nor permit any employee or invitee, to go upon the roof of the building, except as approved by the City.
18. The Lessee shall not be permitted, nor permit any employee or invitee, to smoking, including e-cigarettes in all areas of the building and on the Leased Premises.
19. The Lessee shall not use any method of heating or air conditioning other than as provided by City or any dedicated system approved by City.
20. The Lessee shall not be permitted, nor permit any employee or invitee, to use the Leased Premises for lodging.
21. The Lessee shall comply with all safety, fire protection, and evacuation regulations established by the City or any applicable governmental agency.
22. The Lessee shall not put up nor operate any engine, boiler, dynamo, or machinery of any kind, nor carry on any mechanical business in said Leased Premises nor place any explosive therein, nor use any kerosene or oils or burning fluids in the Leased Premises without first obtaining written consent of the City.
23. The City will adopt and furnish to Lessee general guidelines relating to signs inside the building. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Lessee by a person or entity approved by City. The Lessee shall not cause any sign, placard, picture, name, advertisement, or notice to be visible from the exterior of the Leased Premises without the prior written consent of the City.

24. The City is responsible for snow removal of the Leased Premises parking area. The Lessee shall assist in snow removal and salting of customer entrance during and in preparation of business hours.
25. The Lessee shall ensure that the doors of its Premises are closed and locked and that all water faucets, water apparatus, and utilities are shut off before Lessee and Lessee's employees leave the Leased Premises so as to prevent waste or damage. The Lessee shall make good all injuries sustained by other tenants or occupants of the building or City for any default or carelessness in this regard. On multiple-tenancy floors, the Lessees shall keep the doors to the building corridors and stairs closed at all times except for ingress and egress.
26. The Lessee shall not install any radio, television, or other data transmission antenna, or any satellite dish, loudspeaker, or any other device on the roof or exterior walls of the building, without the prior written consent of the City. No television, radio, or recorder shall be played in such a manner as to cause a nuisance to any other tenant.
27. The Lessee shall not be permitted, nor permit any employee or invitee, to canvas, solicit, distribute of handbills or any other written material and peddling in the building are prohibited, and each tenant shall cooperate to prevent the same.
28. The City shall have the right to designate and restrict the areas available within the [PROPERTY ADDRESS] property for the parking of vehicles by Lessee, its employees, agents, visitors and invitees (customers and clients). No overnight parking will be allowed without the prior written consent of the City.
29. The Lessee and Lessee's employees shall park in the front lot, allowing invitees (customers and clients) the opportunity to park near the building. There will be no assigned spaces, unless otherwise assigned by the City. Lessees will keep an inventory of Lessee's employees' vehicles.

ATTACHMENT C

Certificate of Insurance

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MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, provides notice of Tenant's interest in the leased premises and of the existence of the lease. In accordance with 27 V.S.A. § 341, the lease entered into by the parties is described as follows:

1. Names of the parties.

- A. Landlord's Name: The City of Burlington, Vermont
- B. Tenant's Name: [Tenant's Corporate Name]

2. Statement of the rights of a party to extend or renew the lease. Upon mutual agreement of the Parties, this lease may be extended for a one (1) year renewal term. The renewal term shall automatically commence upon the expiration of the initial term under the same terms contained herein, except that either Party may decline the extension by providing 60 days written notice to the other Party.

3. Parties' addresses set forth in the lease.

- A. Landlord's Address: Burlington City Hall, 149 Church Street, Burlington, Vermont, 05401.
- B. Tenant's Address: [Tenant's Address. May be the leased address]

4. Date of the execution of the lease. [Date]

5. Term of the lease, the date of commencement, and the date of termination.

- A. Term of the lease: [Duration of lease, e.g. 2 years]
- B. Date of commencement: [Date]
- C. Date of termination: [Date]

6. Description of the real property as set forth in the lease. The City-owned building and ground space known and numbered as [Property Address], Suite [Number] in Burlington, Vermont, which consists of approximately [Number] square feet of building space ("Leased Premises").

7. Statement of the rights of a party to purchase the real property or exercise a right of first refusal with respect thereto. Tenant has *no* rights to purchase the real property. Tenant has *no* rights to exercise a right of first refusal with respect thereto.

8. **Statement of any restrictions on assignment of the lease.** Tenant shall not assign the lease or sublet any part of the Leased Premises without the expressed written consent of the City.

9. **The location of an original lease.**

[Department's Name and Address]

IN WITNESS WHEREOF, the parties have executed or have caused this instrument to be executed by their proper officers duly authorized to do so.

THE CITY OF BURLINGTON

By: _____

Name: _____

Title: Mayor of the City of Burlington, Vermont

Address: 149 Church St, Burlington, VT 05401

State of Vermont, County of Chittenden. This record was acknowledged before me on _____ (date) by Miro Weinberger as the Mayor of the City of Burlington, Vermont.

Signature of Notary Public: _____

Stamp or certificate number: _____

Title of office: _____

My commission expires: _____

[TENANT'S NAME]

By: _____

Name: _____

Title: _____

Address: _____

State of Vermont, County of _____. This record was acknowledged before me on _____ (date) by _____ (authorized signatory's name).

Signature of Notary Public: _____

Stamp or certificate number: _____

Title of office: _____

My commission expires: _____

DRAFT

DRAFT

**ATTACHMENT D:
BURLINGTON STANDARD CONTRACT CONDITIONS
FOR CONTRACTORS**

1. DEFINITIONS:

- A. The “Contract” shall mean the Contract between Contractor and the City to which these conditions apply and includes this Attachment C.
- B. The “Contractor” 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 Contractor, as provided in the Contract.

2. REGISTRATION: The Contractor agrees to be registered with the Vermont Secretary of State’s office as a business entity doing business in the State of Vermont at all times this Contract is effective. This registration must be complete prior to Contract execution.

3. INSURANCE: Prior to beginning any work, the Contractor shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the City. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the Effective Date of the Contract. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. 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 Contractor’s actions or omissions. The liability insurance furnished by the Contractor is primary and non-contributory for all the additional insured.

The Contractor is responsible to verify and confirm in writing to the City that: (i) all sub-contractors must comply with the same insurance requirements as the Contractor; (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 Contractor for the Contractor’s operations. These are solely minimums that have been developed and must be met to protect the interests of the City.

- A. General Liability And Property Damage: With respect to all operations performed by the Contractor, sub-contractors, agents or workers, it is the Contractor’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 Contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont and ensure that all sub-contractors 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/Contractor 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 Contractor is responsible for any and all deductibles.
3. Coverage: Prior to performing any work, the Contractor shall provide evidence of professional liability insurance coverage defined under this section. In addition, the Contractor 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 Contractor 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 Contractor 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 Contractor, sub-contractor, 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 Contractor 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 Contractor'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 Contractor shall disclose in writing to the City any actual or potential conflicts of interest or any appearance of a conflict of interest by the Contractor, its employees or agents, or its sub-contractors, if any.
5. **PLANS, RECORDS, AND AVAILABLE DATA:** The City agrees to make available, at no charge, for the Contractor's use all available data related to the Contract including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.
6. **PERSONNEL REQUIREMENTS AND CONDITIONS:** The Contractor 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 Contractor 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 Contractor warrants that no company or person has been employed or retained, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that no company or person has been paid or has a contract with the Contractor to be paid, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, the City shall have the right to annul the Contract, without liability to the City, and to regain all costs incurred by the City in the performance of the Contract.

The City reserves the right to require removal of any person employed by a Contractor, from work related to the Contract, for misconduct, incompetence, or negligence as determined by the City, in the due and proper performance of Contractor's duties, or for neglecting or refusing to comply with the requirements of the Contract.

7. **PERFORMANCE:** Contractor 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, Contractor 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 Contractor is responsible to identify and follow any course of direction provided by the City.
9. **RESPONSIBILITY FOR SUPERVISION:** The Contractor shall assume primary responsibility for general supervision of Contractor employees and their sub-Contractors 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 Contractor shall be responsible to the City for all acts or omissions of its sub-contractors 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 Contractor will counsel with the City, plus achieve any necessary contacts and discussions with the affected owners, regarding any requirement necessary for revisions of facilities or existing installations, both above and below ground. Any such installations must be completely and accurately exhibited on any detail sheets or plans. The Contractor shall inform the City, in writing, of any such contacts and the results thereof.
11. **INSPECTION OF WORK:** The City shall, at all times, have access to the Contractor's work for the purposes of inspection, accounting, and auditing, and the Contractor shall provide

whatever access is considered necessary to accomplish such inspections. At any time, the Contractor shall permit the City or representative for the City the opportunity to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the Contractor pursuant to the Contract, 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 Contractor, shall be subject to review and endorsement by the City.

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

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

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

- 13. PUBLIC RELATIONS:** Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the Contractor will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Contractor shall conduct themselves with propriety. The Contractor agrees to inform property owners and/or tenants, in a timely manner, if there is need for entering upon private property as an agent of the City, in accordance with 19 V.S.A. § 35 and §.503, to accomplish the work under the Contract. The Contractor agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the Contractor, the City shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Contractor is acting as an agent of the City.

- 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 Contractor 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 Contractor shall perform any liaison that the City deems necessary for the furtherance of the work and participate in conferences with the City, at any reasonable time, concerning interpretation and evaluation of all aspects covered under the Contract.

The Contractor further agrees to participate in meetings with the City and any other interested or affected participant, for the purpose of review or resolution of any conflicts pertaining to the Contract.

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

- B. Appearance as Witness:** If and when required by the City, the Contractor, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related contract, on behalf of the City. The Contractor shall be equitably paid, 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 Contractor or the Contractor'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 Contractor, 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 Contractor and the Contractor 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 Contractor 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, Contractor shall immediately give the City written notice thereof. Contractor 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 Contractor 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 Contractor as soon as practicable of any non-appropriation, and Contractor 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 Contractor.

20. EXTENSION OF TIME: The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by the Contractor for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Contract. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the City may decide. Time extensions shall be granted by amendment, only for excusable delays, such as delays beyond the control of the Contractor and without the fault or negligence of the Contractor.

21. PUBLIC HEALTH EMERGENCY:

A. Compliance with Mandates and Guidance: The Contractor 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 Contractor must comply with all local, state, federal orders, directives, regulations, guidance, advisories during a public health emergency. Contractor 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 Contractor shall create a public health emergency plan acceptable to the City. The Contractor 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 Contractor'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. Contractor 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: Contractor 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 Contractor has adequately corrected its failure to comply with the above.
- If Contractor'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 Contract to be extended and shall not affect any rights accrued under this Contract 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 Contractor or changes in the scope of work.

The value of such changes, to the extent not reflected in other payments to the Contractor, shall be incorporated in an amendment and be determined by mutual agreement. 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 Contractor agrees to maintain complete and accurate records, in a form satisfactory to the City for all time devoted directly to same by Contractor employees. The City reserves the right to audit the records of the Contractor related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Contract. When changes are so ordered, no additional work shall be performed by the Contractor until a Contract amendment has been fully executed, unless written notice to proceed is issued by the City. Any claim for extension of time 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 Contractor written notice in which the City shall specify in detail the cause of dissatisfaction. Should the Contractor 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 Contractor itself or direct the activities of the Contractor in doing so, employing such additional help as the City deems advisable. In such events, the City shall be entitled to collect from the Contractor any expenses in completing the Work. In addition, the City may withhold from the amount payable to the Contractor an amount approximately equal to any interest lost or charges incurred by the City for each calendar day that the Contractor is in default after the time of completion stipulated in the Contract Documents.

25. RETURN OF MATERIALS: Contractor agrees that at the expiration or termination of this

Contract, it shall return to City all materials provided to it during its engagement on behalf of City.

- 26. ACCEPTANCE OF FINAL PAYMENT; RELEASE:** Contractor'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 Contractor or their sureties from any obligations under the Contract Documents or any performance or payment bond.
- 27. OWNERSHIP OF THE WORK:** The Contractor agrees that the ownership of all studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM and other material prepared or collected by the Contractor, hereafter referred to as "instruments of professional service", shall become the property of the City as they are prepared and/or developed during execution of the Contract. The Contractor agrees to allow the City access to all "instruments of professional service" at any time. The Contractor shall not copyright any material originating under the Contract without prior written approval of the City. No publications or publicity of the work, in part or in total, shall be made without the express written agreement of the City, except that Contractor may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.
- 28. PROPRIETARY RIGHTS:** The Parties under the Contract hereby mutually agree that, if patentable discoveries or inventions should result from work performed by the Contractors under the Contract, all rights accruing from such discoveries or inventions shall be the sole property of the Contractor. The Contractor, however, agrees to and does hereby grant to the City an irrevocable, nonexclusive, non-transferable, and royalty-free license to 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 Contractor understands that any and all records related to and acquired by the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City. The Contractor shall identify all records that it considers to be trade secrets as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act and shall also identify all other records it considers to be exempt under the Act. It is not sufficient to merely state generally that the record is proprietary or a trade secret or is otherwise exempt. Particular records, pages or section which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.
- 30. RECORDS RETENTION AND ACCESS:** The Contractor 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 Contractor 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 Contractor 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. Contractor, sub-Contractors, 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 Contractor, 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 Contractor 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 Contractor prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Contractor will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the City's approval. The Contractor shall make no claim for additional compensation against the City by reason of such termination.

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 Contractor, or if Contractor makes an assignment for the benefit of creditors, then the City may immediately terminate this contract.
- iii. Dishonest Conduct: If Contractor 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 Contractor 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 Contractor and any sub-contractor 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 Contractor 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. Contractor, and any sub-contractors, 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 Contractor certifies, as of the date of signing the Contract, that the Contractor (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 Contractor is a sole proprietorship, the Contractor's statement applies only to the proprietor. If the Contractor is a partnership, the Contractor's statement applies to all general partners with a permanent residence in Vermont. If the Contractor is a corporation, this provision does not apply.

37. TAX REQUIREMENTS: By signing the Contract, the Contractor certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, that the Contractor 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 Contractor: Except for the active negligence or willful misconduct of the City, or any of its boards, officers, agents, employees, assigns and successors in interest, Contractor 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 Contractors), damages or liability of any nature whatsoever, for death or injury to any person, including Contractor'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 Contractor or its sub-contractors 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 Contractor in writing that a claim to which the indemnification provision may apply has been filed. Contractor 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 Contractor 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 Contractor or any third party.

39. NO GIFTS OR GRATUITIES: The Contractor 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: Contractor shall not sublet or assign this Work, or any part of it, without the written consent of the City. If any sub-contractor is approved, Contractor shall be responsible and liable for all acts or omissions of that sub-contractor for any Work performed. If any sub-contractor is approved, Contractor shall be responsible to ensure that the sub-contractor is paid as agreed and that no lien is placed on any City property.

41. TRANSFERS, SUBLETTING, ETC: The Contractor shall not assign, sublet, or transfer any interest in the work, covered by this Contract, without prior written consent of the City, and further, if any sub-contractor participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the City. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the Contractor of responsibility for the performance of that portion of the work so transferred. The form of the sub-contractor's contract shall be as developed by the Contractor and approved by the City. The Contractor shall ensure that insurance coverage exists for any operations to be performed by any sub-contractor as specified in the insurance requirements section of this Contract.

The services of the Contractor, 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 Contractor 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 Contractor 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 Contractor 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 Contractor.

45. RELATIONSHIP: The Contractor is an independent contractor and shall act in an independent capacity and not as officers or employees of the City. To that end, the Contractor shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Contractor shall provide its own tools, materials, or equipment. The Parties agree that neither the Contractor nor its principal(s) or employees are entitled to any employee benefits from the City. Contractor 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 Contractor agrees to execute any certifications or other documents and provide any certificates of insurance required by the City and understands that this Contract is conditioned on its doing so, if requested.

The Contractor understands and agrees that it is responsible for the payment of all taxes on the above sums and that the City will not withhold or pay for Social Security, Medicare, or other taxes or benefits or be responsible for any unemployment benefits.

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 Contractor in the performance of the work. It is understood, however, that such forms and samples may be modified, altered, and augmented from time to time by the City as occasions may require. It is the responsibility of the Contractor to ensure that they have the latest versions applicable to the Contract.

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

DRAFT

Certification of Agreement to Comply with the City of Burlington's Livable Wage Ordinance

I, _____, on behalf of _____ ("the Contractor"), in connection with a contract for _____

services to be provided to the City of Burlington ("the City"), hereby certify, under oath, that the Contractor (and any of its subcontractors or subgrantees under this contract) shall comply with the City's Livable Wage Ordinance ("LWO"), B.C.O. 21-80 et seq., and that:

- (1) The Contractor shall pay all "covered employees" as defined by the LWO (including covered employees of subcontractors or subgrantees) a livable wage (as determined, or adjusted, annually by the City's chief administrative officer), and shall provide required paid time off for the term of the contract (*or the duration of the contracted project*);
 - (a) Full-time employees are entitled to 12 days of paid time off per year;
and
 - (b) Part-time employees are entitled to 12 days of paid time off per year on a prorated basis; (c) For a covered employer that provides employer assisted health care, the livable wage
shall be at least \$17.44 per hour; and
 - (d) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least \$18.59 per hour.
- (2) The Contractor shall post a notice regarding the applicability of the LWO in the workplace or in other locations where covered employees normally work, and where such notice can be readily seen;
- (3) Upon request of the City's chief administrative officer, the Contractor, for itself and, as applicable, for any of its subcontractors or subgrantees, shall provide payroll records, health insurance enrollment records, and other relevant documentation, as deemed necessary by the chief administrative officer, within ten (10) business days from receipt of the City's request;
- (4) The Contractor shall cooperate in any investigation conducted pursuant to the LWO by the City's designated accountability monitors or the City's Office of City Attorney & Corporate Counsel;
- (5) The Contractor shall not retaliate, nor allow any of its subcontractors or subgrantees to retaliate, against an employee or other person because such employee or person has exercised rights or

is planning to exercise rights protected under the LWO, or has cooperated in an investigation conducted pursuant to the LWO;

(6) The Contractor is required to insert in all subcontracts the requirements of the LWO.

The

Contractor is liable for violations of the LWO committed by its covered subcontractors.

Date: _____

By: _____
Contractor, or its duly authorized agent

Exhibit F: Burlington Outsourcing Ordinance Certification

DRAFT

ATTACHMENT F

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

DRAFT

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