**Attachment B**

1. **CONFLICTS BETWEEN PROVISIONS:** If there is a conflict in the requirements found in these additional provisions and Contractor’s proposal, the provision in these additional provisions shall take precedence over the provision in the proposal.
2. **FEE**

The Parties agree that hourlycompensation for performance of all services and expenses (including those of sub-consultants) under this Agreement shall not to exceed maximum limiting amount of $26.00 per hour without duly authorized written approval.

1. **INDEMNIFICATION:**

The Contractor will act in an independent capacity and not as officers or employees of the City of Burlington. It shall indemnify and hold harmless the City of Burlington and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages including reasonable attorneys’ fees and defense costs arising as a result of its negligent acts and/or omissions in the performance of this contract.

1. **RELATIONSHIP:**

The parties agree that Contractor is an independent CONTRACTOR. 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. Neither the City of Burlington nor its departments shall provide Contractor with specific instructions or training in how to provide the required services, except to the extent required by law or regulation. Contractor shall provide its own tools, materials or equipment. In providing services under this Agreement, CONTRACTOR shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The parties agree that neither CONTRACTOR nor its officers or employees are employees of the City of Burlington or any of its departments, agencies, or related entities. The parties also agree that neither CONTRACTOR nor its officers or employees is entitled to any employee benefits from the City of Burlington. CONTRACTOR understands and agrees that it and its officers and employees have no right to claim any benefits under the Burlington Employee Retirement System, City’s worker’s compensation benefits, health insurance, dental insurance, life insurance or any other employee benefit plan offered by City. CONTRACTOR agrees to execute any certifications to the best of its knowledge, information and belief, or other documents and provide any certificates of insurance required by City and understands that this contract is conditioned on its doing so, if requested.

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

1. **INSURANCE:**

Prior to beginning any work 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 of Burlington. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City of Burlington, must be received prior to the effective date of the Agreement. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City of Burlington for cancellation. In the event that this Contract extends to greater than one year, evidence of continuing coverage must be submitted to the City of Burlington on an annual basis. Certified copies of any insurance policies may be required. Each policy (with the exception of professional liability and workers compensation) shall name the City of Burlington as an additional insured for the possible liabilities resulting from Contractor’s actions or omissions. It is agreed that the liability insurance furnished by the CONTRACTOR is primary and non-contributory for all the additional insured. The Parties, for themselves, their insurers, and their officers, employees and agents, do hereby mutually waive all rights of subrogation on any claims of general liability, auto liability, and worker’s compensation.

CONTRACTOR is responsible to verify and confirm in writing to the City of Burlington that:

(a) All SUB-CONTRACTORs, agents or workers meet the minimum coverage and limits plus maintain current certificates of coverage for all SUB-CONTRACTORs, agents or workers. SUB-CONTRACTORs must comply with the same insurance requirements as MOPA.

(c) All work activities related to the agreement shall meet minimum coverage and limits.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of CONTRACTOR for Contractor’s operations. These are solely minimums that have been developed and must be met to protect the interests of the City of Burlington.

*GENERAL LIABILITY AND PROPERTY DAMAGE:*

 With respect to all operations performed by Contractor, SUB-CONTRACTORs, agents or workers, it is Contractor’s responsibility to insure that general liability insurance coverage, on an occurrence form, provides all major divisions of coverage including, but not limited to and with limits not less than:

1. Premises Operations

2. Independent CONTRACTORS' Protective

3. Products and Completed Operations

4. Personal Injury Liability

5. Contractual Liability

6. Broad Form Property Damage

7. Medical Expenses

8. Collapse, Underground and Explosion Hazards

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  | 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. Fire Damage (Any one fire)  |  |  | $ 250,000 |
|  |  | 6. Med. Expense (Any one person)  |  |  | $ 5,000 |

*WORKERS' COMPENSATION*: With respect to all operations performed, CONTRACTORshall carry workers compensation insurance in accordance with the laws of the State of Vermont and ensure that all SUB-CONTRACTORs and SUBCONTRACTORs carry the same workers’ compensation insurance for all work performed by them under this contract. Minimum limits for Employer's Liability:

(a) Bodily Injury by Accident: $500,000 each accident

(b) Bodily Injury by Disease: $500,000 policy limit, $500,000 each employee

*PROFESSIONAL LIABILITY INSURANCE:*

(a) General. The Contractor shall carry technology tech professional liability insurance covering errors and omissions made during their performance of contractile duties with the following minimum limits:

$2,000,000 - Annual Aggregate

$1,000,000 - Per Claim

(b) Deductibles. The CONSULTANT is responsible for any and all deductibles.

(c) Coverage. N/A

*AUTOMOBILE LIABILITY:* The CONSULTANT shall carry commercial automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the agreement. Each policy shall provide coverage with a limit not less than: $1,000,000 - Combined Single Limit for each occurrence.

UMBRELLA LIABILITY:

$1,000,000 Each Event Limit

$1,000,000 General Aggregate Limit

**COMPLIANCE WITH LAWS**

1. **GENERAL COMPLIANCE WITH LAWS**

The CONSULTANT shall comply with all applicable Federal, State and local laws, including if applicable the Burlington Livable Wage Ordinance, the Non-Outsourcing Ordinance and the Union-Deterrence Ordinance and shall provide the required certifications attesting to compliance with these ordinances (see attached ordinances and certifications).

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

1. **CIVIL RIGHTS and EQUAL EMPLOYMENT OPPORTUNITY**

During performance of the Agreement, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status or genetic information.

1. **TAX REQUIREMENTS**: By signing the Agreement, the CONTRACTOR certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, he/she is in good standing with respect to payment, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of signature on the Agreement.
2. **REGISTRATION:** 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. **PERSONNEL REQUIREMENTS AND CONDITIONS**: CONTRACTOR shall employ only qualified personnel, for responsible authority to supervise the work. CONTRACTOR shall employ only qualified personnel. The City of Burlington shall have the right to approve or disapprove key personnel assigned to administer activities related to the Agreement

Except with the approval of the City of Burlington, during the life of the Agreement, CONTRACTOR shall not employ:

(a) Personnel on the payroll of the City of Burlington who are directly involved with the awarding, administration, monitoring, or performance of the Agreement or any project(s) that are the subjects of the Agreement.

(b) Any person so involved within one (1) year of termination of employment with the City of Burlington.

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

The City of Burlington reserves the right to require removal of any person employed by Contractor, from work related to the Agreement, for misconduct, incompetence, or negligence, in the opinion of the City of Burlington in the due and proper performance of its duties, or who neglects or refuses to comply with the requirements of the Agreement.

1. **TRANSFERS, SUBLETTING, ETC**: CONTRACTOR shall not assign, sublet, or transfer any interest in the work, covered by an Agreement, without prior written consent of the City of Burlington 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 of Burlington. The approval or consent to assign or sublet any portion of the work, shall in no way relieve CONTRACTOR of responsibility for the performance of that portion of the work so transferred. The form of the SUB-CONTRACTOR agreement shall be as developed by CONTRACTOR and approved by the City of Burlington. 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 agreement.

The services of Contractor, to be performed under the Agreement, are personal and shall not be transferred without written authorization of the City of Burlington. Any authorized sub agreements shall contain all of the same provisions for and attached to the original agreement with the City of Burlington.

1. **CONTINUING OBLIGATIONS**: CONTRACTOR agrees that if because of death or other occurrences, it becomes impossible to effectively perform its services in compliance with the Agreement, neither CONTRACTOR nor its surviving members shall be relieved of their obligations to complete the Agreement. However, the City of Burlington may terminate the Agreement if it considers a death or incapacity of any members to be a loss of such magnitude that it would affect the firm's ability to satisfactorily execute the Agreement.
2. **OWNERSHIP OF THE WORK**: 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 Contractor, hereafter referred to as "instruments of professional service", shall become the property of the City of Burlington upon full payment of all monies owed to CONTRACTOR as they have been prepared and/or developed during execution of the Agreement. CONTRACTOR agrees to allow access to all “instruments of professional service” at any time. CONTRACTOR shall not copyright any material originating under the Agreement without prior written approval of the City of Burlington. No publications or publicity of the work, in part or in total, shall be made without the agreement of the City of Burlington, except that CONTRACTOR may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials. The City of Burlington agrees, to the fullest extent permitted by law, to indemnify and hold CONTRACTOR harmless from any claim, liability, or cost (including reasonable attorney’s fees and defense costs) arising or allegedly arising out of any reuse or modification of the instruments of professional service by the City of Burlington or by any person or entity that obtains the instruments of professional service from or through the City of Burlington.
3. **PROPRIETARY RIGHTS**: The parties under the Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Agreement, all rights accruing from such discoveries or inventions shall be the sole property of Contractor. Contractor, however, agrees to and does hereby grant to the City of Burlington an irrevocable, nonexclusive, non-transferable, and royalty­-free license to practice each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the Agreement.
4. **Public Records:** 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. 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.
5. **ReCORDS Retention:** CONTRACTOR agrees to retain, in its files, and to produce to the City of Burlington within the time periods requested, all books, documents, EDM, accounting records, and other evidence related to the City of Burlington, at any time during this Agreement and for a period of at least three (3) years after its termination. CONTRACTOR further agrees that the City of Burlington shall have access to all the above information for the purpose of reviewing and audit during the Agreement period and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the City of Burlington if requested. MOPA, SUB-CONTRACTORs, or any representatives performing work related to the Agreement, are responsible to insure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage. Notwithstanding the foregoing, the City of Burlington’s right to inspect, copy, or audit shall not extend to the composition of the City of Burlington’s rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

1. **APPEARANCES**:
2. Hearings and Conferences. CONTRACTOR shall provide professional services required by the City of Burlington and necessary for furtherance of any work covered under the Agreement. Professional services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its contractual services covered under the Agreement.

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

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

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

1. Appearance as Witness. If and when required by the City of Burlington, Contractor, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related Agreement, on behalf of the City of Burlington. CONTRACTOR shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Contract document.
2. **CHANGES AND AMENDMENTS:** No changes or amendments of the Agreement shall be effective unless documented in writing and signed by authorized representatives of the City of Burlington and Contractor.
3. **EXTENSION OF TIME**: CONTRACTOR agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by CONTRACTOR for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the City of Burlington may decide. Time extensions shall be granted by amendment, only for excusable delays, such as delays beyond the control of CONTRACTOR and without the fault or negligence of Contractor.
4. **SETTLEMENTS OF MISUNDERSTANDINGS**: If requested in writing by either the City of Burlington or Contractor, the City of Burlington and CONTRACTOR shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by first entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties.