

# **ATTACHMENT A**

Draft Contractor Agreement

**CITY OF BURLINGTON**  
**DRAFT CONTRACTOR AGREEMENT**

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

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

**1. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

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

**2. RECITALS**

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

**3. EFFECTIVE DATE, TERM, AND TERMINATION**

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

**4. AGREEMENT DOCUMENTS**

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

**The following documents constitute the Agreement Documents:**

- Attachment A: Request for Proposals dated \_\_\_\_\_**
- Attachment B: Contractor's Response to Request for Proposals dated \_\_\_\_\_**
- Attachment C: Burlington Contractor Conditions**
- Attachment D: Burlington Livable Wage Ordinance Certification**
- Attachment E: Burlington Outsourcing Ordinance Certification**
- Attachment F: Burlington Union Deterrence Ordinance Certification**
- Attachment G: Contractor's Certificate of Insurance**

**5. SCOPE OF WORK**

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

**6. PAYMENT FOR SERVICES**

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

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

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

- C. Maximum Limiting Amount.** The total amount that may be paid to the Contractor for all services and expenses under this Agreement shall not exceed the maximum limiting amount of \$\_\_\_\_\_. The City shall not be liable to Contractor for any amount exceeding the maximum limiting amount without duly authorized written approval.

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

[Name, address, phone, email]

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

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

The City shall deliver written notice to Contractor as soon as practicable of any non-appropriation, and Agreement 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.

## **7. COMPLIANCE WITH LAWS**

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

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

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

## **9. SEVERABILITY**

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

## **10. ENTIRE AGREEMENT**

This Agreement, including the Agreement Documents, constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein or pursuant to Attachment C, Section 17 (Changes and Amendments) below.

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

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

## **12. ASSIGNMENT**

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

## **13. WAIVER**

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

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

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

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

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

#### **16. JURISDICTION**

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

#### **17. ARM’S LENGTH**

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

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

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

— Signatures follow on the next page —

**19. SIGNATURE**

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

**Contractor**  
**(Name of Contractor)**

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

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

**City of Burlington**  
**(Department)**

**By:** \_\_\_\_\_  
Name  
Department

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

# **ATTACHMENT B**

Contractor's Proposal

# **ATTACHMENT C**

Burlington Contractor Conditions

## ATTACHMENT C

### BURLINGTON CONTRACTOR CONDITIONS

- 1. 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 is 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 Agreement 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.

- 2. INDEMNIFICATION:** The Contractor shall indemnify, defend, and hold harmless the City and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the Contractor's acts and/or omissions in the performance of this Agreement. If the City, its officers, agents, or employees are notified of any claims asserted against it to which this indemnification provision may apply, the City shall immediately thereafter notify the 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. 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.
- 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](http://www.ambest.com)). The certificate of insurance coverage shall be documented on forms acceptable to the City. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the Effective Date of the Agreement. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. In the event that this Agreement extends to greater than one year, evidence of continuing coverage must be submitted to the City on an annual basis. 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. It is agreed that 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 Agreement shall meet minimum coverage and limits.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the 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 and with limits not less than:

1. Premises Operations
2. Independent Contractors' Protective
3. Products and Completed Operations
4. Personal Injury Liability
7. 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 Agreement. Minimum limits for Employer's Liability:

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

**C. PROFESSIONAL LIABILITY INSURANCE:**

1. General. The Contractor shall carry \_\_\_\_\_ professional liability insurance covering errors and omissions made during their performance of contractual duties with the following minimum limits:
  - (a) \$3,000,000 - Annual Aggregate
  - (b) \$2,000,000 - Per Occurrence
2. Deductibles. The 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 Agreement 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 Agreement. Each policy shall provide coverage with a limit not less than: \$1,000,000 Combined Single

Limit for each occurrence.

**E. VALUABLE PAPERS AND RECORDS INSURANCE:** The 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. GENERAL COMPLIANCE WITH LAWS:** The Contractor shall comply with all applicable Federal, State and local laws, including but not limited to the Burlington Livable Wage Ordinance, the Non-Outsourcing Ordinance, and the Union-Deterrence Ordinance and shall provide the required certifications attesting to compliance with these ordinances (see attached ordinances and certifications).

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

- 5. CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Agreement, the Contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. Contractor, and any subcontractors, shall comply with any Federal, State, or local law, statute, regulation, Executive Order, or rule that applies to it or the services to be provided under this contract concerning equal employment, fair employment practices, affirmative action, or prohibitions on discrimination or harassment in employment.
- 6. CHILD SUPPORT PAYMENTS:** By signing the Agreement, the Contractor certifies, as of the date of signing the Agreement, 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.
- 7. 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, 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 Agreement.
- 8. 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 Agreement is effective. This registration must be complete prior to Agreement execution.

**9. 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 Agreement.

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

1. Any City employees who are directly involved with the awarding, administration, monitoring, or performance of the Agreement or any project(s) that are the subjects of the Agreement.
2. Any person so involved within one (1) year of termination of employment with the City.

The 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 Agreement, and that no company or person has been paid or has an agreement 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 Agreement. For breach or violation of this warranty, the City shall have the right to annul the Agreement, without liability to the City, and to regain all costs incurred by the City in the performance of the Agreement.

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

**10. TRANSFERS, SUBLETTING, ETC:** The Contractor shall not assign, sublet, or transfer any interest in the work, covered by this Agreement, without prior written consent of the City, and further, if any sub-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 agreement 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 Agreement.

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

**11. CONTINUING OBLIGATIONS:** The Contractor agrees that if because of death, disability, or other occurrences, it becomes impossible to effectively perform its services in compliance with the Agreement, neither the Contractor nor its surviving members shall be relieved of their obligations to complete the Agreement unless the City agrees to terminate the Agreement because it determines that the Contractor is unable to satisfactorily execute the Agreement.

**12. 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 Agreement. 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 Agreement without prior written approval of the City. No publications or publicity of the work, in part or in total, shall be made without the express written agreement of the City, except that Contractor may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.

**13. PROPRIETARY RIGHTS:** The Parties under the Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Agreement, all rights accruing from such discoveries or inventions shall be the sole property of the 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 each such discovery or invention that may be developed as a part of the work under the Agreement.

**14. 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.

**15. RECORDS RETENTION:** 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 agreement which are related to the City, at any time during this Agreement and for a period of at least three (3) years after its completion or termination. In addition, if any audit, claim, or litigation is commenced before the expiration of that three (3) year period, the records shall be retained until all related audits, claims, or litigation are resolved. The Contractor further agrees that the City shall have access to all the above information for the purpose of reviewing and audit during the Agreement period and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the City if requested in the format in which the records were obtained, created, or maintained, such that their original use and purpose can be achieved. Contractor, sub-Contractors, or any representatives performing work related to the Agreement, are responsible to ensure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage.

**16. APPEARANCES:**

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

The 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 Agreement.

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 Agreement.

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

**B. Appearance as Witness.** If and when required by the City, the 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 Agreement.

**17. CHANGES AND AMENDMENTS:** No changes or amendments to the Work of the Agreement shall be effective unless documented in writing and signed by authorized representatives of the City and the Contractor.

**18. 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 Agreement.

**19. 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 Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the City may decide. Time extensions shall be granted by amendment, only for excusable delays, such as delays beyond the control of the Contractor and without the fault or negligence of the Contractor.

**20. FAILURE TO COMPLY WITH TIME SCHEDULE:** It is mutually understood and agreed to, that neither Party hereto shall be held responsible for delay in performing the work encompassed herein, when such delay is due to unforeseeable causes such as acts of God, or a public enemy, fire, strikes, floods, or legal acts of public authorities. In the event that any such causes for delay are of such magnitude as to prevent the complete performance of the Agreement within two (2) years of the originally scheduled completion date, either Party may by written notice request to amend or terminate the Agreement.

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

1. Breach of Agreement. Administrative remedies - the City may terminate this Agreement due to a breach by Contractor. Termination for breach of Agreement will be without further compensation to the Contractor.
2. Termination for Cause. The City may, upon written notice to the Contractor, terminate the Agreement, as of a date to be specified by the City, if the Contractor fails to complete the designated work to the satisfaction of the City, within the time schedule agreed upon. The Contractor shall be compensated on the basis of the work performed and accepted by the City at the date of final acceptance of the Work.
3. Termination for Convenience. In addition to its rights and options to terminate this Agreement as provided herein, the City may, at any time prior to completion of services specified under the Agreement, terminate the Agreement by submitting written notice to Contractor, within not less than fifteen (15) days prior to the termination date, via certified or registered mail, of its intention

to do so. If the termination is for the City's convenience, payment to the Contractor will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made. However, if a notice of termination is given to a 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.

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

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

**23. RESPONSIBILITY FOR SUPERVISION:** The Contractor shall assume primary responsibility for general supervision of Contractor employees and their sub-Contractors for all work performed under the Agreement and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Agreement. The Contractor shall be responsible to the City for all acts or omissions of its subcontractors and any other person performing work under this Agreement.

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

**25. 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.

**26. 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 Agreement. 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.

**27. 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 Agreement.

Conferences, visits to a site, or an inspection of the work, may be held at the request of any involved party or by representatives of the City.

- 28. RETURN OF MATERIALS:** Contractor agrees that at the expiration or termination of this Agreement, it shall return to City all materials provided to it during its engagement on behalf of City.
- 29. PLANS, RECORDS, AND AVAILABLE DATA:** The City agrees to make available, at no charge, for the Contractor's use all available data related to the Agreement including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plans, or any other pertinent public records.
- 30. DESIGN STANDARDS:** Unless otherwise specifically provided for in the Agreement, 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 Agreement. 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.
- 31. 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 Agreement. 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.

- 32. 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 Agreement. 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 Agreement, the progress report shall summarize actual costs and any earned portion of fixed fee.

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

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

No approval given or payment made under an agreement, shall be conclusive evidence of the performance of said agreement, either wholly or in part thereof, and no payment shall be construed to be acceptance of defective work

or improper materials.

The City agrees to pay the Contractor and the Contractor agrees to accept, as full compensation, for performance of all services rendered and expenses incurred, the fee specified in the Agreement.

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

**33. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES:** The City may, upon written notice, and without invalidating the Agreement, require changes resulting from revision or abandonment of work already performed by the 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 Agreement, based on the adjusted quantity of work.

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

The 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 Agreement. When changes are so ordered, no additional work shall be performed by the Contractor until an Agreement amendment has been fully executed, unless written notice to proceed is issued by the City. Any claim for extension of time that may be necessitated as a result of extra work or additional services and changes shall be given consideration and evaluated insofar as it directly relates to the change.

**34. CONFLICT OF INTEREST:** The 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 subcontractors, if any.

**35. 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 Agreement.

**36. 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.

# **ATTACHMENT D**

Livable Wage Ordinance Certification

**ATTACHMENT D**

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

- 38.** I, \_\_\_\_\_, on behalf of \_\_\_\_\_ ("the Contractor") in connection with a contract for \_\_\_\_\_ services that we provide to the City, hereby certify under oath that the Contractor (and any subcontractors under this contract) is and will remain in compliance with the City of Burlington's Livable Wage Ordinance, B.C.O. 21-80 et seq., and that
- 39.** (1) as a condition of entering into this contract or grant, we confirm that all covered employees as defined by Burlington's Livable Wage Ordinance (including the covered employees of subcontractors) shall be paid a livable wage (as determined, or adjusted, annually by the City of Burlington's chief administrative officer) and provided appropriate time off for the term of the contract;
- 40.** (2) a notice regarding the applicability of the Livable Wage Ordinance shall be posted in the workplace(s) or other location(s) where covered employees work;
- 41.** (3) we will provide verification of an employee's compensation, produce payroll or health insurance enrollment records or provide other relevant documentation (including that of any subcontractor), as deemed necessary by the chief administrative officer, within ten (10) business days from receipt of a request by the City;
- 42.** (4) we will cooperate in any investigation conducted by the City of Burlington's City Attorney's office pursuant to this ordinance; and
- 43.** (5) we will not retaliate (nor allow any subcontractor to retaliate) against an employee or other person because an employee has exercised rights or the person has cooperated in an investigation conducted pursuant to this ordinance.
- 44.** Date \_\_\_\_\_ By: \_\_\_\_\_
- 45.** \_\_\_\_\_ Contractor
- 46.** \_\_\_\_\_
- 47.** \_\_\_\_\_
- 48.** Subscribed and sworn to before me:
- 49.** \_\_\_\_\_
- 50.** Date \_\_\_\_\_ \_\_\_\_\_
- 51.** \_\_\_\_\_ Notary

## 53. ARTICLE VI. LIVABLE WAGES<sup>1</sup>

### 54. 21-80 Findings and purpose.

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55. In enacting this article, the city council states the following findings and purposes:

56. (a) Income from full-time work should be sufficient to meet an individual's basic needs;
57. (b) The City of Burlington is committed to ensuring that its employees have an opportunity for a decent quality of life and are compensated such that they are not dependent on public assistance to meet their basic needs;
58. (c) The City of Burlington is committed, through its contracts with vendors and provision of financial assistance, to encourage the private sector to pay its employees a livable wage and contribute to employee health care benefits;
59. (d) The creation of jobs that pay livable wages promotes the prosperity and general welfare of the City of Burlington and its residents, increases consumer spending with local businesses, improves the economic welfare and security of affected employees and reduces expenditures for public assistance;
60. (e) It is the intention of the city council in passing this article to provide a minimum level of compensation for employees of the City of Burlington and employees of entities that enter into service contracts or receive financial assistance from the City of Burlington.

61. (Ord. of 11-19-01; Ord. of 10-21-13)

### 62. 21-81 Definitions.

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63. As used in this article, the following terms shall be defined as follows:

64. (a) *Contractor or vendor* is a person or entity that has a service contract with the City of Burlington where the total amount of the service contract or service contracts exceeds fifteen thousand dollars (\$15,000.00) for any twelve (12) month period, including any subcontractors of such contractor or vendor.
65. (b) *Grantee* is a person or entity that is the recipient of financial assistance from the City of Burlington in the form of grants, including any contractors or subgrantees of the grantee, that exceed fifteen thousand dollars (\$15,000.00) for any twelve (12) month period.
66. (c) *Covered employer* means the City of Burlington, a contractor or vendor or a grantee as defined above. The primary contractor, vendor, or grantee shall be responsible for the compliance of each of its subcontractors (or of each subgrantee) that is a covered employer.
67. (d) *Covered employee* means an "employee" as defined below, who is employed by a "covered employer," subject to the following:
68. (1) An employee who is employed by a contractor or vendor is a "covered employee" during the period of time he or she spends on furnishing services under a service contract with the City of Burlington, notwithstanding that the employee may be a temporary or seasonal employee;
69. (2) An employee who is employed by a grantee who spends at least half of his or her time on activities funded by the City of Burlington is a "covered employee."
70. (e) *Designated accountability monitor* shall mean a nonprofit corporation which has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and that is independent of the parties it is monitoring.

71. (f) *Employee* means a person who is employed on a full-time or part-time regular basis. In addition, commencing with the next fiscal year, a seasonal or temporary employee of the City of Burlington who works ten (10) or more hours per week and has been employed by the City of Burlington for a period of four (4) years shall be considered a covered employee commencing in the fifth year of employment. "Employee" shall not refer to volunteers working without pay or for a nominal stipend, persons working in an approved apprenticeship program, persons who are hired for a prescribed period of six (6) months or less to fulfill the requirements to obtain a professional license as an attorney, persons who are hired through youth employment programs or student workers or interns participating in established educational internship programs.
72. (g) *Employer-assisted health care* means health care benefits provided by employers for employees (or employees and their dependents) at the employer's cost or at an employer contribution towards the purchase of such health care benefits, provided that the employer cost or contribution consists of at least one dollar and twenty cents (\$1.20) per hour. (Said amount shall be adjusted every two (2) years for inflation, by the chief administrative officer of the city.)
73. (h) *Livable wage* has the meaning set forth in Section [21-82](#).
74. (i) *Retaliation* shall mean the denial of any right guaranteed under this article, and any threat, discipline, discharge, demotion, suspension, reduction of hours, or any other adverse action against an employee for exercising any right guaranteed under this article. Retaliation shall also include coercion, intimidation, threat, harassment, or interference in any manner with any investigation, proceeding, or hearing under this article.
75. (j) *Service contract* means a contract primarily for the furnishing of services to the City of Burlington (as opposed to the purchasing or leasing of goods or property). A contract involving the furnishing of financial products, insurance products, or software, even if that contract also includes some support or other services related to the provision of the products, shall not be considered a service contract.

76. (Ord. of 11-19-01; Ord. of 10-21-13)

**77. 21-82 Livable wages required.**

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78. (a) Every covered employer shall pay each and every covered employee at least a livable wage no less than:
79. (1) For a covered employer that provides employer assisted health care, the livable wage shall be at least thirteen dollars and ninety-four cents (\$13.94) per hour on the effective date of the amendments to this article.
80. (2) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least fifteen dollars and eighty-three cents (\$15.83) per hour on the effective date of the amendments to this article.
81. (3) Covered employees whose wage compensation consists of more or other than hourly wages, including, but not limited to, tips, commissions, flat fees or bonuses, shall be paid so that the total of all wage compensation will at least equal the livable wage as established under this article.
82. (b) The amount of the livable wage established in this section shall be adjusted by the chief administrative officer of the city as of July 1 of each year based upon a report of the Joint Fiscal Office of the State of Vermont that describes the basic needs budget for a single person but utilizes a model of two (2) adults residing in a two (2) bedroom living unit in an urban area with the moderate cost food plan. Should there be no such report from the Joint Fiscal Office, the chief administrative officer shall obtain and utilize a basic needs budget that applies a similar methodology. The livable wage rates derived from utilizing a model of two (2) adults residing in a two (2) bedroom living unit in an urban area with a

moderate cost food plan shall not become effective until rates meet or exceed the 2010 posted livable wage rates. Prior to May 1 preceding any such adjustment and prior to May 1 of each calendar year thereafter, the chief administrative officer will provide public notice of this adjustment by posting a written notice in a prominent place in City Hall by sending written notice to the city council and, in the case of covered employers that have requested individual notice and provided contact information to the chief administrative officer, by notice to each such covered employer. However, once a livable wage is applied to an individual employee, no reduction in that employee's pay rate is permissible due to this annual adjustment.

**83.** (c) Covered employers shall provide at least twelve (12) compensated days off per year for full-time covered employees, and a proportionate amount for part-time covered employees, for sick leave, vacation, personal, or combined time off leave.

**84.** (Ord. of 11-19-01; Ord. of 5-2-11; Ord. of 6-13-11; Ord. of 10-21-13)

**85. 21-83 Applicability.**

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**86.** (a) This article shall apply to any service contract or grant, as provided by this article that is awarded or entered into after the effective date of the article. After the effective date of the article, entering into any agreement or an extension, renewal or amendment of any contract or grant as defined herein shall be subject to compliance with this article.

**87.** (b) The requirements of this article shall apply during the term of any service contract subject to the article. Covered employers who receive grants shall comply with this article during the period of time the funds awarded by the City of Burlington are being expended by the covered employer.

**88.** (Ord. of 11-19-01; Ord. of 10-21-13)

**89. 21-84 Enforcement.**

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**90.** (a) Each service contract or grant covered by this article shall contain provisions requiring that the covered employer or grantee submit a written certification, under oath, during each year during the term of the service contract or grant, that the covered employer or grantee (including all of its subcontractors and subgrantees, if any) is in compliance with this article. The failure of a contract to contain such provisions does not excuse a covered employer from its obligations under this article. The covered employer shall agree to post a notice regarding the applicability of this section in any workplace or other location where employees or other persons contracted for employment are working. The covered employer shall agree to provide payroll records or other documentation for itself and any subcontractors or subgrantees, as deemed necessary by the chief administrative officer of the City of Burlington, within ten (10) business days from receipt of the City of Burlington's request.

**91.** (b) The chief administrative officer of the City of Burlington may require that a covered employer submit proof of compliance with this article at any time, including but not limited to:

**92.** (1) Verification of an individual employee's compensation;

**93.** (2) Production of payroll, health insurance enrollment records, or other relevant documentation; or

**94.** (3) Evidence of proper posting of notice.

**95.** If a covered employer is not able to provide that information within ten (10) business days of the request, the chief administrative officer may turn the matter over to the city attorney's office for further enforcement proceedings.

**96.** (c) The City of Burlington shall appoint a designated accountability monitor that shall have the authority:

97. (1) To inform and educate employees of all applicable provisions of this article and other applicable laws, codes, and regulations;
98. (2) To create a telephonic and electronic accountability system under this article that shall be available at all times to receive complaints under this article;
99. (3) To establish and implement a system for processing employees' complaints under this article, including a system for investigating complaints and determining their initial credibility; and
100. (4) To refer credible complaints to the city attorney's office for potential enforcement action under this article.
101. The designated accountability monitor shall forward to the City of Burlington all credible complaints of violations within ten (10) days of their receipt.
102. (d) Any covered employee who believes his or her covered employer is not complying with this article may file a complaint in writing with the city attorney's office within one (1) year after the alleged violation. The city attorney's office shall conduct an investigation of the complaint, during which it may require from the covered employer evidence such as may be required to determine whether the covered employer has been compliant, and shall make a finding of compliance or noncompliance within a reasonable time after receiving the complaint. Prior to ordering any penalty provided in subsection (e), (f), or (g) of this section, the city attorney's office shall give notice to the covered employer. The covered employer may request a hearing within thirty (30) days of receipt of such notice. The hearing shall be conducted by a hearing officer appointed by the city attorney's office, who shall affirm or reverse the finding or the penalty based upon evidence presented by the city attorney's office and the covered employer.
103. (e) The City of Burlington shall have the right to modify, terminate and/or seek specific performance of any contract or grant with a covered employer from any court of competent jurisdiction, if the covered employer has not complied with this article.
104. (f) Any covered employer who violates this article may be barred from receiving a contract or grant from the city for a period up to two (2) years from the date of the finding of violation.
105. (g) A violation of this article shall be a civil offense subject to a civil penalty of from two hundred dollars (\$200.00) to five hundred dollars (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any covered employee is not compensated as required by this article shall constitute a separate violation.
106. (h) If a complaint is received that implicates any City of Burlington employee in a possible violation of this article, that complaint will be handled through the City's personnel procedures, not through the process outlined in this article.
107. (i) Any covered employee aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against the covered employer within two (2) years after discovery of the alleged violation. The court may award any covered employee who files suit pursuant to this section, as to the relevant period of time, the following:
108. (1) The difference between the livable wage required under this article and the amount actually paid to the covered employee;

109. (2) Equitable payment for any compensated days off that were unlawfully denied or were not properly compensated;
110. (3) Liquidated damages in an amount equal to the amount of back wages and/or compensated days off unlawfully withheld or fifty dollars (\$50.00) for each employee or person whose rights under this article were violated for each day that the violation occurred or continued, whichever is greater;
111. (4) Reinstatement in employment and/or injunctive relief; and
112. (5) Reasonable attorneys' fees and costs.
113. (j) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article. No person shall engage in retaliation against an employee or threaten to do so because such employee has exercised rights or is planning to exercise rights protected under this article or has cooperated in any investigation conducted pursuant to this article.

114.(Ord. of 11-19-01; Ord. of 2-17-04; Ord. of 5-2-11; Ord. of 10-21-13)

**115. 21-85 Other provisions.**

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116. (a) No covered employer shall reduce the compensation, wages, fringe benefits or leave available to any covered employee in order to pay the livable wage required by this article. Any action in violation of this subsection shall be deemed a violation of this article subject to the remedies of Section [21-84](#).
117. (b) No covered employer with a current contract, as of the effective date of this provision, with the City of Burlington for the use of property located at the Burlington International Airport may reduce, during the term of that contract, the wages of a covered employee below the livable wage as a result of amendments to this article.
118. (c) Where pursuant to a contract for services with the city, the contractor or subcontractor incurs a contractual obligation to pay its employees certain wage rates, in no case except as stated in subsection (d) of this section, shall the wage rates paid pursuant to that contract be less than the minimum livable wage paid pursuant to this article.
119. (d) Notwithstanding subsection (c) of this section, where employees are represented by a bargaining unit or labor union pursuant to rights conferred by state or federal law and a collective bargaining labor agreement is in effect governing the terms and conditions of employment of those employees, this chapter shall not apply to those employees, and the collective bargaining labor agreement shall control.
120. (e) Covered employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the Earned Income Tax Credit under federal and state law.
121. (f) The chief administrative officer of the city shall have the authority to promulgate rules as necessary to administer the provisions of this article, which shall become effective upon approval by the city council.

122.(Ord. of 11-19-01; Ord. of 10-21-13)

**123. 21-86 Exemptions.**

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124. An exemption from any requirement of this article may be requested for a period not to exceed two (2) years:
125. (a) By a covered employer where payment of the livable wage would cause substantial economic hardship;  
and

126. (b) By the City of Burlington where application of this article to a particular contract or grant is found to violate specific state or federal statutory, regulatory or constitutional provisions or where granting the exemption would be in the best interests of the City.

127. A covered employer or grantee granted an exemption under this section may reapply for an exemption upon the expiration of the exemption. Requests for exemption may be granted by majority vote of the city council. All requests for exemption shall be submitted to the chief administrative officer. The finance committee of the City of Burlington shall first consider such request and make a recommendation to the city council. The decision of the city council shall be final.

128.(Ord. of 11-19-01; Ord. of 10-21-13)

**129. 21-87 Severability.**

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130. If any part or parts or application of any part of this article is held invalid, such holding shall not affect the validity of the remaining parts of this article.

131.(Ord. of 11-19-01; Ord. of 10-21-13)

**132. 21-88 Annual reporting.**

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133. On or before April 15 of each year, the city attorney's office shall submit a report to the city council that provides the following information:

134. (a) A list of all covered employers broken down by department;

135. (b) A list of all covered employers whose service contract did not contain the language required by this article;  
and

136. (c) All complaints filed and investigated by the city attorney's office and the results of such investigation.

137.(Ord. of 10-21-13)

**138. 21-89 Effective date.**

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139. The amendments to this article shall take effect on January 1, 2014, and shall not be retroactively applied.

140.(Ord. of 10-21-13)

# **ATTACHMENT E**

Outsourcing Ordinance Certification

**ATTACHMENT E**

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

## ARTICLE VII. OUTSOURCING

### 21-90 Policy.

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It is the policy of the City of Burlington to let service contracts to contractors, subcontractors and vendors who perform work in the United States.

(Ord. of 11-21-05/12-21-05)

### 21-91 Definitions.

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- (a) *Contractor or vendor.* A person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods), including any subcontractors of such contractor or vendor.
- (b) *Government funded project.* Any contract for services which involves any city funds and the total amount of the contract is fifty thousand dollars (\$50,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.
- (c) *Outsourcing.* The assigning or reassigning, directly, or indirectly through subcontracting, of services under a government funded project to workers performing the work outside of the United States.

(Ord. of 11-21-05/12-21-05)

### 21-92 Implementation.

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- (a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who is outsourcing, or causing the work to be performed outside of the United States or Canada.
- (b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that the services provided under the contract will be performed in the United States or Canada.

(Ord. of 11-21-05/12-21-05)

### 21-93 Exemption.

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An exemption from requirements of this article may be authorized by the chief administrative officer based upon a determination that the services to be performed for the government funded project are not available in the United States or Canada at a reasonable cost. Any such exemption decision by the chief administrative officer shall be reported to the board of finance in writing within five (5) days. The board of finance may, if it should vote to do so, override the exemption decision if such vote occurs within fourteen (14) days of the date of the chief administrative officer's communication to such board.

(Ord. of 11-21-05/12-21-05)

### 21-94 Enforcement.

---

(a) Any contractor, subcontractor or vendor who files false or materially misleading information in connection with an application, certification or request for information pursuant to the provisions of this article or outsources work on a government funded project shall be deemed to be in violation of this article.

(b) A violation of this article shall be a civil offense subject to a civil penalty of from one hundred dollars (\$100.00) to five hundred (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any violation of any provision of this article shall continue shall constitute a separate violation.

(c) The City of Burlington shall have the right to modify, terminate and or seek specific performance of any contract for a government funded project if the contractor, subcontractor or vendor has not complied with this article.

(Ord. of 11-21-05/12-21-05)

**21-95—21-99 Reserved.**

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# **ATTACHMENT F**

Union Deterrence Ordinance Certification

**ATTACHMENT F**

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

## ARTICLE VIII. UNION DETERRENCE

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### 21-100 Policy.

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It is the policy of the City of Burlington to limit letting contracts to organizations that provide union deterrence services to other companies.

(Ord. of 3-27-06/4-26-06)

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### 21-101 Definitions.

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- (a) *Contractor or vendor.* A person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods), including any subcontractors of such contractor or vendor.
- (b) *Government funded project.* Any contract for services which involves any City funds and the total amount of the contract is fifteen thousand dollars (\$15,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.
- (c) *Union deterrence services.* Services provided by a contractor, subcontractor or vendor that are not restricted to advice concerning what activities by an employer are prohibited and permitted by applicable laws and regulations, but extend beyond such legal advice to encouraging an employer to do any of the following:
- 1) Hold captive audience, (i.e., mandatory) meetings with employees encouraging employees to vote against the union;
  - 2) Have supervisors force workers to meet individually with them to discuss the union;
  - 3) Imply to employees, whether through written or oral communication, that their employer may have to shut down or lay people off if the union wins the election;
  - 4) Discipline or fire workers for union activity;
  - 5) Train managers on how to dissuade employees from supporting the union.
- (d) *Substantial portion of income.* For the purposes of this article, substantial portion of income shall mean greater than ten (10) percent of annual gross revenues or one hundred thousand dollars (\$100,000.00), whichever is less.

(Ord. of 3-27-06/4-26-06)

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### 21-102 Implementation.

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- (a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who
- 1) Advises or has advised an employer to conduct any illegal activity in its dealings with a union.
  - 2) Advertises union deterrence services as specialty services;

3) Earns a substantial portion of its income by providing union deterrence services to other companies in order to defeat union organizing efforts.

(b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that it has not advised the conduct of any illegal activity, it does not currently, nor will it over the life of the contract provide union deterrence services in violation of this article.

(Ord. of 3-27-06/4-26-06)

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**21-103 Enforcement.**

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(a) Any contractor, subcontractor or vendor who files false or materially misleading information in connection with an application, certification or request for information pursuant to the provisions of this article or provided union deterrence services during the life of a contract for a government funded project shall be deemed to be in violation of this article.

(b) The City of Burlington shall have the right to modify, terminate and or seek specific performance of any contract for a government funded project if the contractor, subcontractor or vendor has not complied with this article.

(Ord. of 3-27-06/4-26-06)

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**21-104—21-110 Reserved.**

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# **ATTACHMENT G**

Certificate of Insurance

# **ATTACHMENT H**

System Names, Attributes, and Location

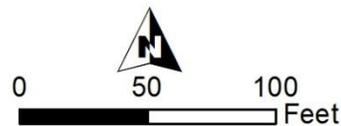
### System Names, Attributes, and Location

<b>Bed Name (location)</b>	<b>Bid Category</b>	<b>Maintenance Type</b>	<b>Bed type</b>	<b>Number of Beds</b>	<b>Approximate Landscaping Area (sq ft)</b>	<b>Adjacent Address</b>
North Street 1	Base	Residential	Bioretention	1	321	520 North St.
North Street 2	Base	Residential	Bioretention	1	192	502 North St.
Hyde Street	Base	Residential	Bioretention	1	677	147 Hyde St.
Grant Street	Base	Residential	Bioretention	1	154	67 Grant St.
Decatur St. 1	Base	Residential	Bioretention	1	122	41 Decatur St.
Decatur St. 2	Base	Residential	Bioretention	1	90	13 Decatur St.
Mansfield Ave	Base	Residential	Bioretention	1	1,752	129 Mansfield Ave
School Street	Base	Residential	Bioretention	1	321	40 School St.
Booth Street	Base	Residential	Bioretention	1	140	32 Booth St.
North Street 3	Base	Residential	Bioretention	1	107	370 North St.
Ward Street	Base	Residential	Bioretention	1	62	49 Ward St.
St. Paul St.	Base	Downtown Core	Bioretention	8	3,346	St. Paul between Main and Maple
King St.	Base	Downtown Core	Bioretention	2	317	118 King St.
Maple St.	Base	Downtown Core	Bioretention	1	433	139 Maple St.
Greenway @ North Ave Ext	Potential	Greenway	Landscaped area	4	1,290	Near 3108 North Ave Ext - All four corners of intersection
Greenway @ Starr Farm Rd	Potential	Greenway	Landscaped area	4	1,050	Near 226 Starr Farm Road - All four corners of the intersection
Greenway @ Staniford Rd	Potential	Greenway	Landscaped area	4	1,760	Near 261 Staniford - All four corners of intersection
Greenway @ Shore Rd	Potential	Greenway	Landscaped area	4	2,080	Near 262 Shore Rd - All four corners of intersection
Greenway @ Leddy Park	Potential	Greenway	Bioretention swale	2	7,230	216 Leddy Park Rd - northeast corner of main entrance path to Leddy Arena and Greenway
Greenway @ Driftwood Ln	Potential	Greenway	Landscaped area	5	2,130	Access just before private Road Sign - southwest, northeast and south east corners of intersection
Greenway / Urban Reserve @ Pause Place 3	Potential	Greenway	Landscaped area	5	11,295	Access via Lake St. Extension and service road to Northeast corner of the urban reserve
Greenway @ Rock Point	Potential	Greenway	Landscaped area	2	5,425	Access path at North Beach Campground
Greenway @ Little Eagle Bay Rd	Potential	Greenway	Landscaped area	2	2,712	Access off of Little Eagle Bay Rd.
Calahan Rain Garden	Potential	Residential	Bioretention	1	800	68 Locust St.
<b>Total</b>				<b>55</b>	<b>43,806</b>	

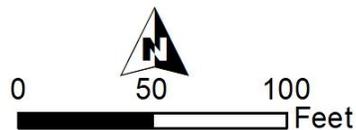
# **ATTACHMENT I**

System Location Map

# Calahan Rain Garden (Add Alternate Bid)



# Decatur St. Beds (Base Bid)



# Greenway Beds (Add Alternate Bid)

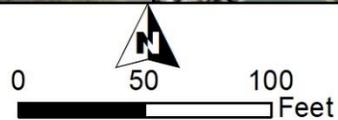
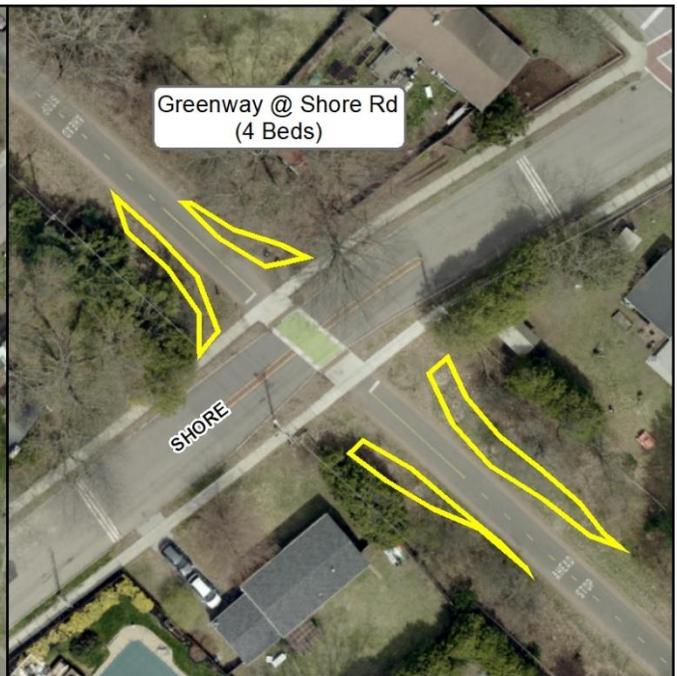
North Ave Ext

Starr Farm Rd



Staniford Rd

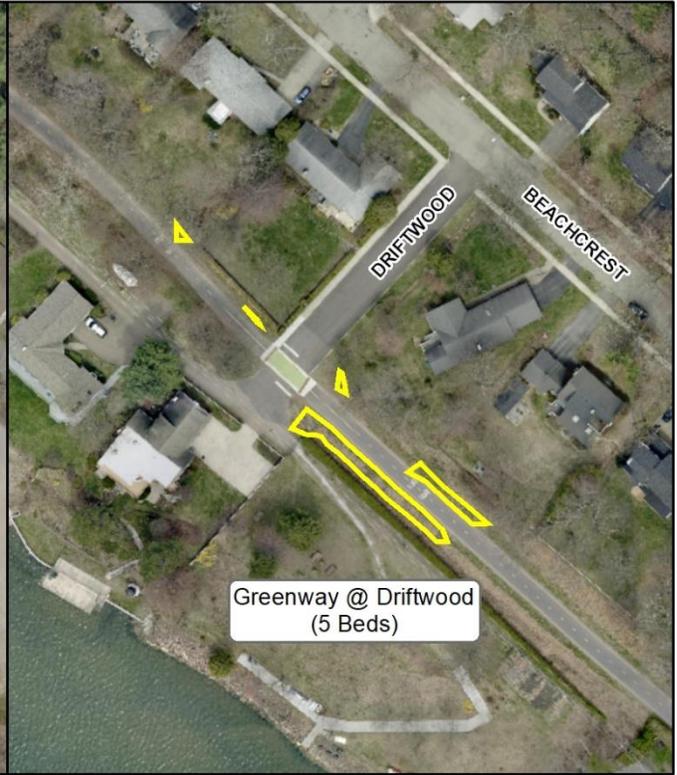
Shore



# Greenway Beds Continued (Add Alternate Bid)

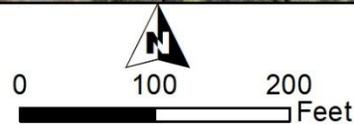
Leddy Park

Driftwood Ln

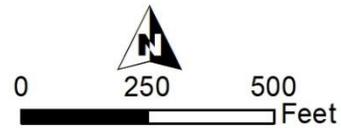


Little Eagle Bay

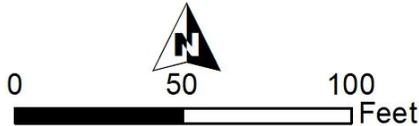
Rock Point



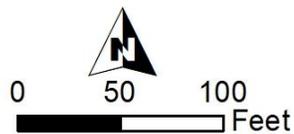
# Greenway / Urban Reserve Beds (Add Alternate Bid)



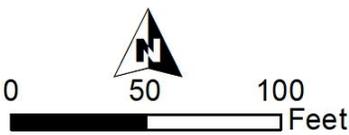
# Hyde St. Bed (Base Bid)



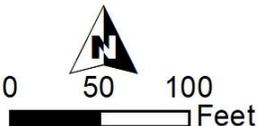
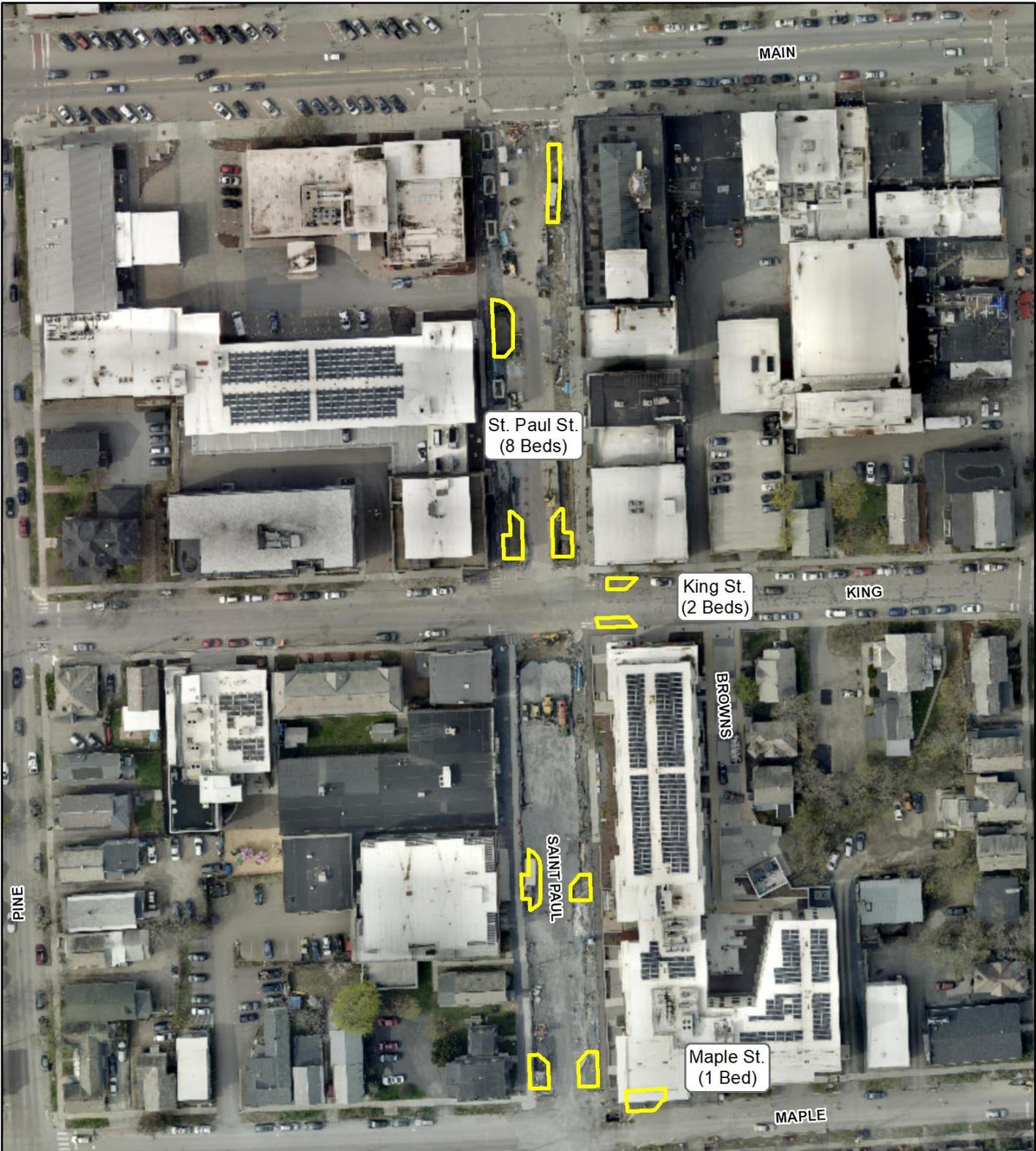
# North St and Mansfield Ave Beds (Base Bid)



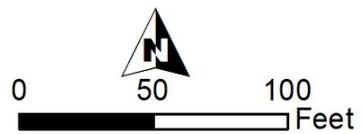
# School/Booth/North St. Beds (Base Bid)



# St. Paul / King / Maple St. Beds (Base Bid)



# Ward St. Bed (Base Bid)



# **ATTACHMENT J**

Basic Bid Request BID FORM – Stormwater Landscape Services

**Attachment J: Basic Bid Request BID FORM – Stormwater Landscape Services**

**Contact Information:**

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_

Telephone/Email: \_\_\_\_\_

**Experience / Capabilities:**

Experience with general garden maintenance: \_\_\_\_\_

Experience with maintenance of vegetated stormwater systems: \_\_\_\_\_

Experience with the procurement and installation of plants from local nurseries:

\_\_\_\_\_

Brief summary of specialty capabilities for reference (i.e. knowledge of rain garden plants, etc.)

\_\_\_\_\_

**Bid Schedule:**

Complete as best as possible the following bid schedule and include it in your proposal or fill out above information and attach existing time and material rate sheets.

Item	Description	Unit	Estimated Quantity	Normal Working Hours	After Hours Worked
1	Mobilization / Demobilization	LS*	1	\$ _____	\$ _____
2	Hourly rate	HR	1	\$ _____	\$ _____
3	Subcontractor Markup	N/A	N/A	_____%	N/A
4	Materials Markup	N/A	N/A	_____%	N/A

\* Lump Sum

**Bid Pricing – Location Breakdown:**

**NOTE:**

1. The “All-Inclusive Bid Price Per System” Total price (highlighted Cell) should match the total bid value attached to your proposal.
2. All locations in the “Alternate” bid category should also be priced at an all-inclusive rate. Following selection of contractor, any Alternate locations mutually agreed to be added to the Scope of Work by the City and the Contractor will increase the total bid value by the value listed for that location.

<b>Bed Name (location)</b>	<b>Bid Category</b>	<b>Number of Beds</b>	<b>Approximate Landscaping Area (sq ft)</b>	<b>All Inclusive Bid Price Per System</b>
North Street 1	Base	1	321	\$
North Street 2	Base	1	192	\$
Hyde Street	Base	1	677	\$
Grant Street	Base	1	154	\$
Decatur St. 1	Base	1	122	\$
Decatur St. 2	Base	1	90	\$
Mansfield Ave	Base	1	1,752	\$
School Street	Base	1	321	\$
Booth Street	Base	1	140	\$
North Street 3	Base	1	107	\$
Ward Street	Base	1	62	\$
St. Paul St.	Base	8	3,346	\$
King St.	Base	2	317	\$
Maple St.	Base	1	433	\$
Greenway @ North Ave Ext	Alternate	4	1,290	\$
Greenway @ Starr Farm Rd	Alternate	4	1,050	\$
Greenway @ Staniford Rd	Alternate	4	1,760	\$
Greenway @ Shore Rd	Alternate	4	2,080	\$
Greenway @ Leddy Park	Alternate	2	7,230	\$
Greenway @ Driftwood Ln	Alternate	5	2,130	\$
Greenway / Urban Reserve @ Pause Place 3	Alternate	5	11,295	\$
Greenway @ Rock Point	Alternate	2	5,425	\$
Greenway @ Little Eagle Bay Rd	Alternate	2	2,712	\$
Calahan Rain Garden	Alternate	1	800	\$
<b>Total</b>		<b>55</b>	<b>43,806</b>	

NOTE:

1. By submission of this BID, each BIDDER certifies, and in the case of a joint BID, each party thereto certifies as to

his own organization, that his BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER acknowledges receipt of the following ADDENDUM:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

By signing this bid sheet, the Contractor agrees to abide by all specifications and conditions in these Contract Documents.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date