

CITY OF BURLINGTON
DRAFT CONSTRUCTION CONTRACT

This Construction 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 section 10 below.

11. NO THIRD PARTY BENEFICIARIES

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

12. ASSIGNMENT

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.

<p>Contractor (Name of Contractor)</p> <p>By: _____</p> <p>Date: _____</p>
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<p>City of Burlington (Department <u>Parks Recreation & Waterfront</u> Department)</p> <p>By: _____ <u>Cindi Wight</u> <u>Department Parks Recreation & Waterfront</u></p> <p>Date: _____</p>
