

**CITY OF
BURLINGTON
DRAFT
CONSULTANT
AGREEMENT**

This Consultant Agreement (“Agreement”) is entered into by and between the City of Burlington, Vermont (“the City”), and _____ (“Consultant”), a Vermont corporation located at _____. Consultant and the City agree to the terms and conditions of this Agreement.

1. RECITALS

- A. Authority.** Authority to enter into this Agreement exists in the City Charter. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.
- C. Purpose.** The City seeks to employ the Consultant to **[INSERT STATEMENT OF PURPOSE]**.

2. EFFECTIVE DATE AND TERM

- 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 Consultant before the Effective Date, and shall have no obligation to pay Consultant for any performance or expense incurred before the Effective Date or after the expiration or termination of this Agreement.
- B. Term.** This Agreement, and the Parties respective performance, shall commence on the Effective Date and expire upon, **[INSERT DATE]** or the satisfaction of the City, unless sooner terminated as provided herein.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “Agreement Documents”** means all the documents identified in paragraph 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 of this Agreement.
- C. “Party”** means the City or Consultant and “Parties” means the City and Consultant.
- D. “Project”** means the Engineering Standards and Specifications.

E. “Work” means the services described in §5 of this Agreement along with the specifications contained in the Agreement Documents as defined in §4 below.

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 xxxxxxxxxx, 2019

Attachment B: Response to Request for Proposals dated xxxxx, 2019.

Attachment C: Burlington Consultant Conditions

Attachment E: City of Burlington Livable Wage Ordinance Certification

Attachment F: City of Burlington Outsourcing Ordinance Certification

Attachment G: City of Burlington Union Deterrence Ordinance Certification

Attachment H: Consultant’s Certificate of Insurance

5. SCOPE OF WORK

The Consultant shall perform the services as listed in Attachments A (Request for Proposals) and B (Response to Request for Proposals).

6. PAYMENT FOR SERVICES

A. Agreement Fee. The City shall pay the Consultant for completion of the Work in accordance with the Response to Request for Proposals Attachment A as follows:

\$(**INSERT METHOD OF PAYMENT**)

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

B. Payment Schedule. The City shall pay the Consultant in the manner and at such times as set forth in the Agreement Documents.

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

D. Invoice. Consultant shall submit one copy of each invoice and backup documentation for expenses to _____ via mail or e-mail to the following:

[INSERT NAME], [INSERT TITLE]

[INSERT ADDRESS]

[INSERT PHONE NUMBER]

[INSERT EMAIL]

Consultant shall not be entitled to payment under this Agreement without providing an invoice and sufficient backup documentation for expenses as set forth in this section.

C. 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 Consultant as soon as practicable of any non-appropriation, and Agreement Consultant shall not be entitled to any payment or compensation of any kind for work performed after the City has delivered written notice of non-appropriation.

7. 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.

9. BINDING EFFECT AND CONTINUITY

All provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, successors 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.

10. 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

11. ENTIRE AGREEMENT

This Agreement and the Agreement Documents constitute 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.

12. MODIFICATION

Except as otherwise provided in this Agreement or the Agreement Documents, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved by the Parties.

13. 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.

14. 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.

15. 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.

16. 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.

17. JURISDICTION

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

18. ASSIGNMENT

Consultant's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the City. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Consultant's rights and obligations approved by the City shall be subject to the provisions of this

— 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 style="text-align: center;">Consultant (Name of Consultant)</p> <p>By: _____</p> <p>Date: _____</p>
--

<p style="text-align: center;">City of Burlington</p> <p>By: _____ Name</p> <p>Date: _____</p>
