Chapin Spencer
PUBLIC WORKS DIRECTOR

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REQUESTS FOR PROPOSALS ("RFP")
FOR ANALYSIS & REPLACEMENT DESIGN FOR COOLING TOWER SYSTEM
FLETCHER FREE LIBRARY, 235 COLLEGE STREET, BURLINGTON, VERMONT

Date of Issuance: August 24, 2018

Issued by: City of Burlington, Department of Public Works

Mandatory site visit: September 13, 2018 at 3pm

Due Date for Questions: September 17, 2018 by 2 p.m. (please submit via email)
(Responses will be posted on September 19, 2018 by 5 p.m.)

Due Date for Proposals: September 25, 2018 by 2 p.m.

Issuing Point of Contact: Martha Q. Keenan, CIP Manager, Department of Public Works
645 Pine Street, Burlington, VT 05401
(802) 540-0701
mkeenan@burlingtonvt.gov

PROJECT BACKGROUND

The City of Burlington, Vermont ("City" or "Municipality") is seeking qualified, interested firms to submit sealed proposals for the replacement design of the cooling tower at Fletcher Free Library ("FFL"). Requested services include analysis of the current cooling system, recommendations for replacement, and a design of the chosen replacement system.

SCOPE OF WORK

The goal of this project is to analyze and design a replacement of the current FFL cooling tower system to improve efficiency and comfort. The City seeks the following tasks to be included in the Scope of Work contained in each proposal:

1. Current System Analysis
    a. Evaluation of the existing system condition with attention to energy consumption and efficiency.
    b. Evaluation of an open system (existing) versus a closed system
    c. Evaluation of the needs (load of cooling) of the facility.
    d. Recommendations of Design for the replacement.

2. Create two options for replacement of the cooling tower and related equipment.

3. Work with City Utilities to include rebates, grants and efficiencies

4. Provide bid documents to be used by the City to attain a construction contract for the replacement.

5. Attend the mandatory walk through of contractors, respond to questions and evaluate proposals to determine award of contract.

COSTS ASSOCIATED WITH PROPOSAL

Any costs incurred by any person in preparing or submitting a proposal are the sole responsibility of that person. The City will not reimburse any person for any costs incurred as a result of the preparation of proposals in response to this RFP.

COMPLIANCE WITH LAW

All proposals and work completed under a proposal must be performed in accordance with applicable rules, regulations, codes, and ordinances of local, state, and federal authorities. All such proposals and work completed must also be performed in accordance with the requirements of public utility corporations having jurisdiction over the work performed.

DEADLINE FOR RECEIPT OF PROPOSALS

All replies and proposals in response to the Request for Proposals must be received in a sealed envelope clearly marked **"FFL Cooling Tower"** at the address and point of contact no later than **2:00 p.m**. on the above due date (September 25, 2018), at which time all submitted proposals will be publicly opened and recorded. Late proposals will not be accepted under any circumstances. Electronic proposals are preferred as long as they are received by the point of contact by the required deadline. It is the responsibility of the firm submitting replies and proposals to ensure that the point of contact has received a completed proposal by the required deadline.

SITE VISIT

A Mandatory site visit for this project will occur on September 13, 2018 at 2PM. All persons wishing to submit a proposal must attend this site visit.

PARTNERSHIPS

Consultants may partner with other firms, local or otherwise, in order to provide the best possible proposal for ensuring quality and efficient completion of the project tasks.

PROPOSAL FORMAT

Consultants are encouraged to be concise. All proposals must, at a minimum, include: This can be customized to project manager's preference.

1. Letter of Transmittal and two copies of the proposal if sent through the mail. If sent electronically, all documents shall be in .pdf format.

2. Proposed scope of work.

3. Responses should be prepared simply and economically, providing a straightforward and concise description of the respondent's capabilities to satisfy the requirements of this request. Each respondent should provide concise, easily identifiable responses to items identified in the evaluation criteria of the RFP.

4. Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all responsible firms are encouraged to submit proposals.

5. The City will assume no responsibility for oral instruction or interpretation. Questions concerning this Request for Proposal should be directed in writing to:

   Martha Keenan, CIP Manager
   Department of Public Works
   645 Pine Street
   Burlington, VT 05401
   mkeenan@burlingtonvt.gov or 802-540-0701

6. Completed bid form including price for each item, estimated start/end dates, and signature by authorized representative for the firm.

7. A brief description of your firm's history and experience with mechanical design and implementation. If your firm intends to partner with another company, also provide pertinent information on the subcontractor.

8. A work history of up to three (3) related projects showing for each:
   a. Name, address and phone number for each client.
   b. Brief project description, including any energy efficiency improvements.
   c. Statement as to whether project was completed on time and within budget.

9. Location of the office from which the management of the project will take place.

10. Provide signed and notarized attachment D, E, and F from draft contract.

PROPOSAL EVALUATION

Proposals will be reviewed and evaluated by City staff based on the information provided in the proposal. Additional information may be requested prior to final selection. It is anticipated that a decision will be made within 30 days of the due date. The selected consultant must be willing to enter into an agreement with the City in a form substantially similar to the Draft Contract provided in Attachment B.

EVALUATION CRITERIA

Proposals shall be evaluated based on the criteria listed below. Each firm shall respond to evaluation criteria items 1 through 6 in a concise and easily identifiable manner. Information and/or factors gathered during interviews, discussions and/or negotiations also shall be utilized in the final selection decision.

1. Priority assigned to the project and current workload of the firm with particular reference to the personnel and other resources being proposed

2. Qualifications of Staff: This section shall include resumes of key individuals who would be involved in the project. Resumes should adequately describe individual's educational background and specific area(s) of experience and expertise, especially with regard to the project at hand. Areas of expertise shall include:
   a. Mechanical Engineering
   b. Structural Engineering
   c. Energy Efficiency

3. Past performance record and relevant experience.

a. List all similar projects completed by the firm in the past 5 years.
b. References – show names, addresses and telephone numbers.
c. Quality of work, timeliness, diligence, ability to meet budget constraints.

4. Each firm shall state how Engineering omissions and/or errors have been handled by the firm in the past and how any Engineering omissions or errors will be handled for this project.

5. Financial responsibility of the firm: the firm must agree to carry professional liability insurance including errors and omissions in an amount not less than $1,000,000. See additional insurance requirements in ATTACHMENT B.

6. Proposed project schedule.

SELECTION PROCESS

The review committee may engage in individual discussions with firms deemed fully qualified, responsible, and suitable to provide the required services based on the initial responses and with emphasis on professional competence and experience.

After receipt of proposals and discussions, if any, the following criteria will be used in selecting the engineer for the project:

1. Current workload and ability to complete the required work within City time constraints.

2. Special experience, technical capabilities, professional competence and qualifications of the firm and qualifications of proposed personnel assigned to the project.

3. Expertise and experience of firm relative to the specific project.

4. Past cost performance, project scheduling performance and general overall completion on time of past projects.

5. List of associated engineers or other special consultant firms, if any, to be used on the project.

6. Evidence of a clearly demonstrated understanding of the RFP and concise and appropriate response(s) to the items identified in the evaluation criteria section of the RFP.

7. Clearly demonstrated understanding of the work to be performed and completeness and reasonableness of the processing firm's plan for accomplishing the tasks in the given project schedule.

At the conclusion of discussions, the review committee will develop a final ranking of the proposals based on the RFP evaluation factors and information developed during the selection process. Negotiations shall be conducted beginning with the proposal ranked first for the project. If a contract which is satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that firm. If such a contract cannot be negotiated, negotiations with the firm deemed first shall be formally terminated and negotiations conducted with the firm deemed second will commence. This process will continue until such a contract can be negotiated at a fair and reasonable price.

EVALUATION CRITERIA ASSIGNED WEIGHT

1. Priority 15%
2. Qualifications 20%
3. Past Performance 25%
4. Omissions and Errors 10%
5. Financial Responsibility 10%
6. Schedule 20%

TOTAL WEIGHT 100%

CONTRACT REQUIREMENTS

Consultants are advised to review the Draft Contract (Attachment B), the Livable Wage Ordinance (Attachment D), and the Union Deterrence Ordinance (Attachment F) in advance of submitting a proposal. The City of Burlington reserves the right to alter or amend any or all of these provisions in the project contract.

INDEMNIFICATION

The Consultant will act in an independent capacity and not as officers or employees of the City of Burlington. The Consultant will be required to agree to indemnify, defend, and hold harmless the City of Burlington and its officers and employees from all liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the chosen Consultant's acts and/or omissions in the performance of the contract.

LIMITATIONS OF LIABILITY

The City of Burlington assumes no responsibility or liability for costs incurred by parties responding to this RFP, or responding to any further requests for interviews, additional data, etc., prior to the issuance of the contract.

REJECTION OF PROPOSALS

The City of Burlington reserves the right to reject any or all proposals, to negotiate with one or more parties, or to award the contract in the City's best interests, including proposed contractor's schedule. The City reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals.

OWNERSHIP OF DOCUMENTS

Proposals, plans, specifications, basis of designs, electronic data, designs and reports prepared under any agreement between the selected consultant and the City shall become the property of the City. Records shall be furnished to the City by the Consultant upon request at any time, however the Consultant may retain copies of the original documents.

PUBLIC RECORDS

Any and all records submitted to the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be handled is solely within the purview of City. All records considered to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, must be identified, as shall all other records considered to be exempt under the Act. It is not sufficient to merely state generally that a proposal is proprietary, contains a trade secret, or is otherwise exempt. Particular records, pages, and sections which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

ATTACHMENT A – Proposal
PROJECT: Analysis & Replacement Design of FFL Cooling Tower

Consultant:_____ Address:_____

Contact:_____ Telephone/Email:_____

Proposed Start Date:_____ Estimated End Date:_____

Please write your proposal with each aspect of the project broken out with expected hours, time to complete, reimbursables and estimated cost

Assessment of Current System: $ _____

Design Options (two) with Final Design Choice:
$_____

Creation of Construction Bid documents,
Contractor walk through, review of contractor proposals
$_____

TOTAL BID: $_____

BY SIGNING THIS BID FORM, THE CONSULTANT AGREES TO ABIDE BY ALL SPECIFICATIONS AND CONDITIONS IN THE CONTRACT DOCUMENTS.

_____
SIGNATURE

_____
NAME

_____
TITLE

WITH THIS BID, THE CONSULTANT MUST INCLUDE SIGNED CERTIFICATES OF COMPLIANCE WITH LIVABLE WAGE AND UNION DETERENCE. THIS FORM IS INCLUDED IN ATTACHMENT D AND F.

DRAFT AGREEMENT

CITY OF BURLINGTON, VERMONT
CONSULTANT CONTRACT
Fletcher Free Library Cooling Tower Replacement Design and Engineering Services

1. PARTIES

This Consultant Contract ("Contract") is entered into by and between the City of Burlington, VT ("the City"), and _____ ("Consultant"), a Vermont corporation, with its principal place of business in _____. Consultant and the City agree to the terms and conditions of this Contract.

2. EFFECTIVE DATE AND TERM

A. Effective Date. This Contract shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Contract 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 Contract.

B. Term. This Contract, and the Parties respective performance, shall commence of the Effective date and expire on _____, 20__.

3. RECITALS

A. Authority. Authority to enter into this Contract exists in _____. 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 Contract.

C. Purpose. The City seeks to employ the Consultant to conduct analysis and engineering design services for the Fletcher Free Library located in Burlington, Vermont.

4. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "**Effective Date**" means the date on which this Contract is approved and signed by the City, as shown on the signature page of this Contract.

B. "**Party**" means the City or Consultant and "Parties" means both the City and Consultant.

5. SCOPE OF WORK

The Consultant shall provide all services necessary to ensure the successful completion of the project under consideration as set forth in the Request for Proposals issued by the City on _____, attached herein as Attachment E, and Consultant's Proposal dated _____, attached herein as Attachment A.

If it becomes necessary for Consultant to procure sub-consultant services, the selection of a sub-consultant(s) shall be subject to the City's approval. All solicitations made by the Consultant for sub-consultant services shall include a reference to applicable local, state, and federal law pertaining to non-

discrimination in hiring and employment, the City's Livable Wage Ordinance, and the City's Union Deterrence Ordinance.

6. PAYMENT FOR SERVICES

A. Contract Fee. The City shall pay the Consultant payment at the rate specified in the Consultant's Scope of Services contained within the Consultant's Proposal attached as Attachment A. Consultant agrees to accept this payment as full compensation for performance of all services and expenses (including those of sub-consultants, if any) under this Contract.

B. Maximum Limiting Amount. The total amount that may be paid to the Consultant for all services and expenses under this Contract shall not exceed the maximum limiting amount of $_____. The City shall not be liable to Consultant for any amount exceeding the maximum limiting amount without duly authorized written approval.

C. Invoice. Consultant shall submit one copy of each invoice and backup documentation for expenses to City Capital Improvement Program Manager Martha Q. Keenan via mail or e-mail to the following:

Martha Q. Keenan.
Capital Improvement Program Manager
Department of Public Works
645 Pine Street
Burlington, VT 05401
mkeenan@burlingtonvt.gov.

Consultant shall not be entitled to payment under this Contract without providing an invoice and sufficient backup documentation for expenses as set forth in this **§6.C**.

7. ATTACHMENTS

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

A. Attachment A: Engineering Proposal with itemized expenses by item, dated _____.

B. Attachment B: Burlington Standard Contract Conditions for Consultant Services.

C. Attachment C: Insurance Certificate(s) from Consultant with the City listed as an additional insured.

D. Attachment D: City's Livable Wage Ordinance Requirement and Form

E. Attachment E: Department of Public Works Request for Proposals, dated _____.

F. Attachment F: City's Union Deterrence Ordinance

8. ORDER OF PRECEDENT

In the event of a conflict or inconsistency between the Contract and any attachments, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Attachment B: Burlington Standard Contract Conditions for Consultant Conditions.
2. The other provisions of this Contract.
3. Attachment E: The Department of Public Works Request for Proposals.
4. Attachment A: Engineering Proposal.

9. SIGNATURE PAGE

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

The Parties hereto have executed this Consultant Contact

Consultant

By: _____

Date: _____

City of Burlington
Department of Public Works

By: _____
Chapin Spencer
Director of Public Works

Date: _____

ATTACHMENT B

BURLINGTON STANDARD CONDITIONS FOR CONSULTANT SERVICES

Wherever used, abbreviations may be used in place of a word or phrase and definitions may be used to interpret statements for the meaning of words phrases or expressions. The intent and meaning for abbreviations and definitions shall be interpreted as herein set forth:

AASHTO	American Association of State Highway and Transportation Officials
AGC	Associated General Contractors of America
ANR	Agency of Natural Resources
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
AWWA	American Water Works Association
CADD	Computer Aided Drafting and Design
CES	Contractor Engineering Services
CFR	Code of Federal Regulations
DOT	United States Department of Transportation
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EDM	Electronic Data Media
FHWA	Federal Highway Administration, U.S. Department of Transportation
FSS	Federal Specifications and Standards
FTA	Federal Transit Administration
IBC	International Building Code
IPC	International Plumbing Code
NEC	National Electrical Code
SIR	Self Insured Retention
USC	United States Code
USEPA	United States Environmental Protection Agency
VAOT	Vermont Agency of Transportation
VOSHA	Vermont Occupational Safety and Health Act
VSA	Vermont Statutes Annotated
WEF	Water Environment Association

1. **INDEMNIFICATION:** The CONSULTANT shall act in an independent capacity and not as officers or employees of the CITY. The CONSULTANT 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 CONSULTANT's acts and/or omissions in the performance of "non-professional services" under this contract. As used herein, "non-professional services" means services provided under this Contract other than professional services relating to the design and/or engineering of all or part of the project. The CITY shall notify the CONSULTANT in the event of any such claim or suit covered by this Subsection and the CONSULTANT shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit arising out of "non-professional services" provided under this Contract. The CONSULTANT shall further indemnify the CITY and its officers and employees in the event that the CITY, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the CONSULTANT arising from the provision of "non-professional services" (as defined herein) under this Contract.

   The CONSULTANT shall indemnify 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 CONSULTANT's acts and/or omissions in the performance of "professional services" under this contract. The CONSULTANT shall not be obligated to defend the Municipality and its officers and employees against claims or suits arising from the Party's provision of engineering design services or architectural design services. The CONSULTANT shall be obligated to indemnify and hold the CITY, its officers and employees, harmless from and against monetary damages to third parties, together with reasonable costs, expenses and attorney's fees incurred and paid by the CITY in defending claims by third parties (collectively "Damages") but only in the event and to the extent such Damages are incurred and paid by the CITY as the proximate cause of negligent acts, errors or omissions ("Professional Negligence") by the CONSULTANT, its employees, agents, consultants and subcontractors, in providing the professional services required under this Contract. As used herein, "Professional Negligence" or "negligent acts, errors or omissions" means a failure by the CONSULTANT to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or similar conditions and circumstances.

   After a final judgment or settlement the CONSULTANT may request recoupment of specific defense costs and may file suit in Vermont Superior Court, Chittenden Unit, Civil Division, requesting recoupment. The CONSULTANT may be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the CONSULTANT.

2. **RELATIONSHIP:** The Parties agree that the CONSULTANT is an independent contractor. To that end, the CONSULTANT shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The CITY shall provide the CONSULTANT with no specific instructions or training in how to provide the required services, except to the extent required by law or regulation. The CONSULTANT shall provide its own tools, materials or equipment. The Parties agree that neither the CONSULTANT nor its Principal is an employee of the CITY or any of its departments, agencies, or related entities. The Parties also agree that neither the CONSULTANT nor its Principal is entitled to any employee benefits from the CITY. CONSULTANT understands and agrees that it and its Principal 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 CONSULTANT agrees to execute any certifications or other documents and provide any certificates of insurance required by the CITY and understands that this contract is conditioned on its doing so, if requested.

The CONSULTANT 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.

3. **INSURANCE:** Prior to beginning any work, the CONSULTANT shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the CITY. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the CITY, must be received prior to the Effective Date of the Contract. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the CITY. In the event that this Contract extends to greater than one year, evidence of continuing coverage must be submitted to the CITY on an annual basis. Certified copies of any insurance policies may be required. Each policy (with the exception of professional liability and workers compensation) shall name the CITY as an additional insured for the possible liabilities resulting from the CONSULTANT's actions or omissions. It is agreed that the liability insurance furnished by the CONSULTANT is primary and non-contributory for all the additional insured.

   The CONSULTANT is responsible to verify and confirm in writing to the CITY that:

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

   (b) All work activities related to the Contract shall meet minimum coverage and limits.

   No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the CONSULTANT for the CONSULTANT'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 CONSULTANT, sub-contractors, agents or workers, it is the CONSULTANT'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 CONSULTANTS' Protective
   3. Products and Completed Operations
   4. Personal Injury Liability
   5. Contractual Liability
   6. Broad Form Property Damage
   7. Medical Expenses
   8. Collapse, Underground and Explosion Hazards

Coverage limits shall not be less than:

1. General Aggregate	$2,000,000
2. Products-Completed/Operations Aggregate	$2,000,000
3. Personal & Advertising Injury	$1,000,000
4. Each Occurrence	$1,000,000
5. Fire Damage (Any one fire)	$ 250,000
6. Med. Expense (Any one person)	$ 5,000

B. WORKERS' COMPENSATION:

With respect to all operations performed, the CONSULTANT shall carry workers compensation insurance in accordance with the laws of the State of Vermont and ensure that all sub-contractors carry the same workers' compensation insurance for all work performed by them under this contract. Minimum limits for Employer's Liability:

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

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

C. PROFESSIONAL LIABILITY INSURANCE:

(a) General. The CONSULTANT shall carry architects/engineers professional liability insurance covering errors and omissions made during their performance of this Contract with the following minimum limits:

$2,000,000 - Annual Aggregate

$1,000,000 - Per Claim

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

(c) Coverage. N/A

D. AUTOMOBILE LIABILITY:

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

E. UMBRELLA LIABILITY:

$1,000,000 Each Event Limit

$1,000,000 General Aggregate Limit

COMPLIANCE WITH LAWS

4. **GENERAL COMPLIANCE WITH LAWS:** The CONSULTANT 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. The CONSULTANT shall provide the required certifications attesting to compliance with each of these ordinances (see attached ordinances and certifications). CONSULTANT shall be required to resubmit Livable Wage Ordinance compliance forms annually if the contract period is greater than one year. These forms are due by April 1st of the current year to indicate compliance with the ordinance. CONSULTANT shall be required to meet the current Livable Wage rates posted by the City annually starting July 1st, regardless of the Livable Wage rate at the time of contract execution.

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

5. **CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Contract, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, or genetic information.

   The CONSULTANT shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, and Executive Order 11246 as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR Part 60). The CONSULTANT shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulations 49 CFR § 21 through Appendix C, and Regulations under 23 CFR § 710.405 (b). Accordingly, all subcontracts shall include reference to the above. The CONSULTANT shall comply with all the requirements of Title 21, VSA, Chapter 5, Subchapter 6 and 7, relating to fair employment practices to the extent applicable. A similar provision shall be included in any and all subcontracts.

6. **CHILD SUPPORT PAYMENTS:** By signing the Contract, the CONSULTANT certifies that—as of the date of signing the Contract—they are: (a) not under an obligation to pay child support; (b) under such an obligation but in good standing with respect to that obligation; or (c) under such an obligation but has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan. If the CONSULTANT is a sole proprietorship, the CONSULTANT's statement applies only to the proprietor. If the CONSULTANT is a partnership, the CONSULTANT'S statement applies to all general partners with a permanent residence in Vermont. If the CONSULTANT is a corporation, this provision does not apply.

7. **TAX REQUIREMENTS**: By signing this Contract, the CONSULTANT certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, he/she is in good standing with respect to payment, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of signature on the Contract.

CONTRACTUAL AGREEMENTS

8. **REGISTRATION:** The CONSULTANT agrees to be registered with the Vermont Secretary of

State's office as a business entity doing business in the State of Vermont at all times this Contract is effective. This registration must be complete prior to Contract execution.

9. **PERSONNEL REQUIREMENTS AND CONDITIONS**: The CONSULTANT shall employ only qualified personnel, for responsible authority to supervise the work.

   Except with the approval of the CITY, during the life of the Contract, the CONSULTANT shall not employ:

   A. Personnel on the payroll of the CITY who are directly involved with the awarding, administration, monitoring, or performance of the Contractor any project(s) that are the subjects of the Contract.

   B. Any person so involved within one (1) year of termination of employment with the CITY.

   The CONSULTANT warrants that no company or person has been employed or retained to solicit or secure this Contract, other than a bona fide employee working solely for the CONSULTANT. The CONSULTANT further warrants that no company or person has been paid or has an agreement with the CONSULTANT to be paid, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, the CITY shall have the right to annul the Contract, without liability to the CITY, and to regain all costs incurred by the CITY in the performance of the Contract.

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

10. **TRANSFERS, SUBLETTING, ETC**: A CONSULTANT shall not assign, sublet, or transfer any interest in the work, covered by the Contract, without prior written consent of the CITY and further, if any sub-contractor participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the CITY. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the CONSULTANT 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 CONSULTANT and approved by the CITY. The CONSULTANT shall ensure that insurance coverage exists for any operations to be performed by any sub-contractor as specified in the insurance requirements section of this Contract.

    The services of the CONSULTANT, to be performed under the Contract, are personal and shall not be transferred without written authorization of the CITY. Any authorized sub agreements shall contain all of the same provisions for and attached to this Contract.

11. **CONTINUING OBLIGATIONS**: The CONSULTANT agrees that if, because of death or other occurrences, it becomes impossible to effectively perform its services in compliance with the Contract, neither the CONSULTANT nor its surviving members shall be relieved of their obligations to complete the Contract. However, the CITY may terminate the Contract if it considers a death or incapacity of any members to be a loss of such magnitude that it would affect the firm's ability to satisfactorily execute the Contract.

12. **OWNERSHIP OF THE WORK**: The CONSULTANT 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 CONSULTANT ("Instruments of Professional Service"), shall become the property of the CITY upon full payment of all monies owed to the CONSULTANT as they have been prepared and/or developed during execution of the Contract. The CONSULTANT agrees to allow access to all Instruments of Professional Service" at any time. The CONSULTANT shall not copyright any material originating under the Contract without prior written approval of the CITY. No publications or publicity of the work, in part or in total, shall be made without the agreement of the CITY, except that CONSULTANT 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 Contract hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Contract, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. The CONSULTANT, however, agrees to and does hereby grant to the CITY an irrevocable, nonexclusive, non-transferable, and royalty-free license to practice each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the Contract.

14. **PUBLIC RECORDS**: Any and all records submitted to the city, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be handled is solely within the purview of CITY. All records considered to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, shall be identified, as shall all other records considered to be exempt under the act. It is not sufficient to merely state generally that the proposal is proprietary or a trade secret or is otherwise exempt. Particular records, pages, and sections which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with section 317 of title 1 of the Vermont Statutes Annotated.

15. **RECORDS RETENTION:** The CONSULTANT agrees to retain, in its files, and to produce to the CITY within the time periods requested, all books, documents, EDM, accounting records, and other evidence related to the CITY, at any time during this Contract and for a period of at least three (3) years after its termination. The CONSULTANT further agrees that the CITY shall have access to all the above information for the purpose of review and audit during the Contract term and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the CITY if requested. CONSULTANT, sub-contractors, and any representatives performing work related to the Contract, are responsible for ensuring that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage. Notwithstanding the foregoing, the CITY's right to inspect, copy, or audit shall not extend to the composition of the CITY's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

16. **APPEARANCES**:

    A. **Hearings and Conferences**. The CONSULTANT shall provide professional services required by the CITY and necessary for furtherance of any work covered under the Contract. Professional services shall include appropriate representation at design conferences, public gatherings and

hearings, appearances before any legislative body, commission, board, or court, and any other forum identified by the City to justify, explain and defend its contractual services covered under the Contract.

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

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

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

B. **Appearance as Witness**. If and when required by the CITY, a CONSULTANT, or an appropriate representative, shall prepare for and appear in any litigation concerning any relevant project or related agreement, on behalf of the CITY. The CONSULTANT shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Contract.

17. CHANGES AND AMENDMENTS: No changes or amendments of the Contract shall be effective unless documented in writing and signed by authorized representatives of the CITY and the CONSULTANT.

18. APPENDICES: The CITY may attach, to these specifications, appendices containing various forms and typical sample sheets for guidance and assistance to the CONSULTANT 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 CONSULTANT to ensure that they have the latest versions applicable to the Contract.

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

20. **SETTLEMENTS OF MISUNDERSTANDINGS**: In order to prevent misunderstandings and litigation, it is mutually agreed by the Parties that all questions arising under the terms of an Contract will first be evaluated by the Local Project Manager. Should a claim be denied in whole or in part by the Local Project Manager the CONSULTANT may appeal to the Director of Public Works, except that for claims involving payments, appeals shall be made to the Director of Public Works and the Chief Administrative Officer.

In agreements subjecting costs to final audit, an administrative review regarding the audit will be sent to the CONSULTANT. Any dispute arising from an administrative decision shall be appealed in writing within thirty (30) days of receipt.

A CONSULTANT may appeal any determination regarding the Contract by filing a notice of appeal by hand delivery or courier to the Local Project Manager. The notice of appeal shall specifically state the grounds of the protest. Within seven (7) calendar days of the notice of appeal the CONSULTANT must file with the CITY a detailed statement of the grounds, legal authorities and facts, Including all documents and evidentiary statements, in support of the appeal. Evidentiary statements, if any, shall be submitted under penalty of perjury. The CONSULTANT shall have the burden of proving its appeal by the preponderance of the evidence. Failure to file a notice of appeal or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to appeal the evaluation or qualified process and decisions thereunder

21. **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 Contract within two (2) years of the originally scheduled completion date, either Pparty may by written notice request to amend or terminate the Contract.

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

(a) Breach of Contract. Either Party terminate the Contract if the other Party has committed a material breach of any provision or condition of the Contract. Termination for breach of Contract will be without further compensation to the CONSULTANT.

(b) Termination for Cause. The CITY reserves the right, upon thirty (30) days' prior written notice to the CONSULTANT, to terminate the Contract, as of a date to be specified by the CITY, if the CONTRACTOR fails to complete the designated work to the reasonable satisfaction of the CITY, within the time schedule agreed upon. The CONSULTANT shall be compensated on the basis of the work performed and accepted by the CITY at the date of final acceptance of the Contract.

(c) Termination for Convenience. In addition to its rights and options to terminate an Contract as provided herein, the CITY may, at any time prior to completion of services specified under an Contract, terminate the Contract by submitting written notice to CONSULTANT via certified or registered mail, within not less than thirty (30) days' prior to the termination date. If the termination is for the CITY's convenience, payment to the CONSULTANT 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 CONSULTANT prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the CONSULTANT 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 CONSULTANT shall make no claim for additional compensation against the CITY by reason of such termination.

23. ACKNOWLEDGEMENTS: Acknowledgment of the City of Burlington's support must be included in

any and all publications, renderings and project publicity, including audio/visual materials developed under this contract.

24. **WAIVER:** The CITY's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any rights, power, or privilege preclude any other or further exercise of such right, power, or privilege.

OPERATIONAL STANDARDS

25. **RESPONSIBILITY FOR SUPERVISION**: The CONSULTANT shall assume primary responsibility for general supervision of CONSULTANT's employees its sub-contractors for all work performed under the Contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Contract.

26. **INDEPENDENCE:** The CONSULTANT shall act in an independent capacity and not as officers or employees of the CITY.

27. **UTILITIES:** Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the CONSULTANT 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 CONSULTANT shall inform the CITY, in writing, of any such contacts and the results thereof.

28. **PUBLIC RELATIONS**: Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the CONSULTANT will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the CONSULTANT shall conduct themselves with propriety. The CONSULTANT 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 VSA Title 19 § 35 and §503, in order to accomplish the work under the Contract. The CONSULTANT agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the CONSULTANT, the CITY shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the CONSULTANT is acting as an agent of the CITY.

29. **INSPECTION OF WORK:** The CITY shall, at all times, have access to the CONSULTANT's work for the purposes of inspection, accounting, and auditing, and the CONSULTANT shall provide whatever access is considered necessary to accomplish such inspections. At any time, the CONSULTANT 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 CONSULTANT pursuant to execution of the Contract.

    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.

30. **RETURN OF MATERIALS.** CONSULTANT agrees that at the termination of this Contract, it shall return to the CITY all materials provided to it during its engagement on behalf of the CITY.

PROJECT DEVELOPMENT AND STANDARDS

31. **PLANS RECORDS AND AVAILABLE DATA:** The CITY agrees to make available, at no charge, for the CONSULTANT's use all available data related to the Contract including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.

32. **DESIGN STANDARDS:** Unless otherwise specifically provided for in the Contract, or directed in writing, CONSULTANT's services, studies or designs, that include or make reference to plans, specifications, special provisions, computations, estimates, or other data necessary for construction of a designed facility, shall be in conformance with applicable portions of the following specifications, manuals, codes or regulations, including supplements to or revisions thereof, adopted and in effect prior to award of the Contract:

    (a) All CITY directives and guidelines current at the time of the Contract and as may be issued by the CITY during the progress of the design.

    In case of any conflict with the guidelines referenced, the CONSULTANT is responsible for identifying and following any course of direction provided by the CITY.

33. **REVIEWS AND ACCEPTANCES**: All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the CONSULTANT, shall be subject to review and endorsement by the CITY.

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

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

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

34. **BINDING NATURE AND JURISDICTION:** This Contract shall be binding upon and shall inure to the benefit of the Parties hereto, their successors or heirs and representatives, and assigns. This Contract shall be governed by Vermont law, and the CONSULTANT expressly agrees to submit to the jurisdiction of the courts of the State of Vermont.

PAYMENT FOR SERVICES RENDERED:

35. **PAYMENT PROCEDURES**: The CITY shall pay, or cause to be paid to the CONSULTANT or the CONSULTANT's legal representative, payments in accordance with the Contract. When applicable, for the type of payment specified in the Contract, the progress report shall summarize actual costs and any earned portion of fixed fee.

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

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

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

The CITY agrees to pay the CONSULTANT and the CONSULTANT agrees to accept, as full compensation, for performance of all services rendered and expenses encompassed in conformance therewith, the type of fee specified in the Contract.

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

36. PAYMENT FOR ADDITIONS OR DELETIONS: The CITY may, upon written notice, and without invalidating the Contract, require any changes to, additions to, or deletions from, the originally contemplated extent of the work, prior to completion of the Contract by means of an amendment to the original Contract. Any adjustments of this nature shall be executed under the appropriate fee established in the Contract, based on the adjusted quantity of work, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such addition or deletion.

37. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES: The CITY may, upon written notice, and without invalidating the Contract, require changes resulting from revision or abandonment of work already performed by the CONSULTANT or changes in the scope of work.

The value of such changes, to the extent not reflected in other payments to the CONSULTANT, shall be incorporated in an amendment and be determined by mutual agreement, by one or more of the following:

(a) Fixed Price. By a price that is not subject to any adjustment on the basis of the CONSULTANT's expenses experienced in performing the work. The CONSULTANT is fully responsible for all costs and resulting profit or loss.

(b) Rate Schedule. By unit prices designated in the Contract, or by unit prices covered under any subsequent contracts.

(c) Actual Cost. By amounts determined on the basis of actual costs incurred, as distinguished from forecasted expenditures.

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

The CONSULTANT agrees to maintain complete and accurate records—in a form satisfactory to the CITY—for all time devoted directly to same by CONSULTANT employees. The CITY reserves the right to audit the records of the CONSULTANT related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Contract. When changes are so ordered, no additional work shall be performed by the CONSULTANT until an Contract amendment has

been fully executed, unless written notice to proceed is issued by the CITY. Any claim for extension of time, which 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.

ATTACHMENT D – BURLINGTON ORDINANCE REQUIREMENTS

CITY OF BURLINGTON

10.

revised version

ORDINANCE

Sponsor: Councilors Mason, Bushor, Paul: Ordinance Com.

Public Hearing Dates

First reading: 09/23/13

Referred to: Ordinance Committee

Rules suspended and placed in all stages of passage:

Second reading: 10/21/13

Action: adopted

Date: 10/21/13

Signed by Mayor: 10/30/13

Published 11/06/13

Effective: ~~11/27/13~~

In the Year Two Thousand Thirteen

An Ordinance in Relation to

OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

It is hereby Ordained by the City Council of the City of Burlington, as follows:

That Chapter 21, Offenses and Miscellaneous Provisions, of the Code of Ordinances of the City of Burlington be and hereby is amended by amending Sections21-80 through 21-87 thereof and adding new Sections 21-88 and 21-89 thereto to read as follows:

Sec. 21-80. - Findings and purpose.

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

(a) Income from full-time work should be sufficient to meet an individual's basic needs;

(b) The City of Burlington is committed to ensuring that its ~~year-round~~ employees ~~(full and part time)~~ have an opportunity for a decent quality of life and are compensated~~, and~~ such that they are not dependent on public assistance, to meet their basic needs;

(c) The ~~city~~ 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;

(d) The creation of jobs that pay livable wages promotes the prosperity and general welfare of the ~~city~~ 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;

(e) It is the intention of the city council in passing this article to provide a minimum level of compensation for ~~city~~ employees of the City of Burlington ~~and~~ employees of entities that enter into service contracts or receive financial assistance from the City of Burlington.

Sec. 21-81. - Definitions.

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

a) Contractor or vendor is a person or entity that has a service contract with the City of ~~Burlington primarily for the furnishing of services (as opposed to the purchasing of goods) where~~Burlington where the total amount of the service contract or service contracts exceeds fifteen thousand dollars ($15,000.00) for any twelve-month period, including any subcontractors of such contractor or vendor. ~~A person or entity that has a contract with the City of Burlington for the use of property under the jurisdiction of the board of airport commissioners, or any person or entity that has a sublease or other agreement to perform services on such property, shall also be considered a contractor under this article.~~

(b) Grantee is a person or entity that is the recipient of financial assistance from the City of Burlington in the form of grants ~~administered by the city~~, including any contractors or sub~~contractor~~grantees of the grantee, that exceeds fifteen thousand dollars ($15,000.00) for any twelve-month period.

(c) Covered employer means the City of Burlington ~~(except that the Burlington School Department shall not be considered a covered employer)~~, 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.

(d) Covered employee means an "employee" as defined below, who is employed by a "covered employer," subject to the following:

(1) An employee who is employed by a contractor or vendor is a "covered employee" during the period of time he or she expends on furnishing services under a service contract with the City of Burlington~~funded by the city~~, notwithstanding that the employee may be a temporary or seasonal employee;

(2) An employee who is employed by a grantee who expends at least half of his or her time on activities funded by the ~~city~~ City of Burlington is a "covered employee."

(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.

(ef) Employee means a person who is employed on a full-time or part-time regular basis ~~(i.e., nonseasonal)~~. 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 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 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.

(~~f~~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.)

(~~g~~h) Livable wage has the meaning set forth in section 21-82.

(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.

(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, ~~and~~ 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.

Sec. 21-82. - Livable wages required.

(a) Every covered employer shall pay each and every covered employee at least a livable wage ("Livable Wage") ~~as established under this article.~~no less than:

(1) For a covered employer that provides employer assisted health care, the livable wage shall be at least ~~nine dollars and ninety cents~~thirteen dollars and ninety four cents ($13.94~~9.90~~) per hour on the effective date of the amendments ~~is~~ to this article [~~Dec. 19, 2001~~].

(2) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least ~~eleven dollars and sixty-eight cents~~fifteen dollars and eighty three cents ($15.83~~11.68~~) per hour on the effective date of the amendments to this article [~~Dec. 19, 2001~~].

(3) ~~Tipped covered employees and other ce~~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 ~~an hourly wage which, when combined with the other~~ compensation, will at least equal the ~~l~~Livable ~~w~~Wage as established under this article.

(b) The amount of the ~~l~~Livable ~~w~~Wage established in this section shall be adjusted by the chief administrative officer of the city, as of July 1st~~first~~ 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-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-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 the first day of May preceding any such adjustment and prior to the first day of May of each calendar year thereafter, the chief administrative officer will provide public notice of this adjustment by ~~publishing a notice in a newspaper of general circulation, 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 ~~an address of record~~ to the chief administrative officer, by notice ~~written letter~~ 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.

(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, ~~or~~ personal, or combined time off leave.

Sec. 21-83. - Applicability.

(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 ~~[Dec. 19, 2001]~~. 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.

(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 ~~city's~~ funds awarded by the City of Burlington are being expended by the covered employer.

Sec. 21-84. - Enforcement.

(a) ~~The City of Burlington shall require, as a condition of any~~Each service contract or grant covered by this article ~~section,~~ shall contain provisions requiring that the ~~affected~~ 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 ordinance. ~~confirming payment of a livable wage as a condition of entering into said contract or grant.~~ The ~~affected~~ 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 ~~affected~~ 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~~city~~'s request.

(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

(1) verification of an individual employee's compensation.

(2) production of payroll, health insurance enrollment records, or other relevant documentation, or

(3) evidence of proper posting of notice.

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.

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

(i) To inform and educate employees of all applicable provisions of this article and other applicable laws, codes, and regulations;

(ii) To create a telephonic and electronic accountability system under this article that shall be available at all times to receive complaints under this article;

(iii) To establish and implement a system for processing employees' complaints under this article, including a system for investigating complaints and determining their ~~legitimacy~~initial credibility; and

(iv) To refer creditble complaints to the City Attorney's office for potential enforcement action under this article.

The designated accountability monitor shall forward to the City of Burlington all credible complaints of violations within ten (10) days of their receipt.

(ed) 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 subsections (e), (f), or (g) below, 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.

(~~ee~~b) The City of Burlington shall have the right to modify, terminate and/or seek specific performance of any contract or grant with ~~an affected~~a covered employer from any court of competent jurisdiction, if the ~~affected~~ covered employer has not complied with this article.

(~~fd~~e) 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.

(~~edg~~) 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.

(h) If a complaint is received that implicates any City of Burlington employee in a possible violation of this ordinance, that complaint will be handled through the City's personnel procedures, not through the process outlined in this ordinance.

(~~fi~~-) 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:

(i) The difference between the livable wage required under this article and the amount actually paid to the covered employee;

(ii) Equitable payment for any compensated days off that were unlawfully denied or were not properly compensated;

(iii) ~~I~~Liquidated damages in an amount equal to the amount of back wages and/or compensated days off unlawfully withheld or ~~of~~ $50 for each employee or person whose rights under this article were violated for each day that the violation occurred or continued, whichever is greater;

(iv) ~~r~~Reinstatement in employment and/or injunctive relief; and

(v) ~~r~~Reasonable attorneys' fees and costs.

(~~gi~~) 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.

Sec. 21-85. - Other provisions.

(a) No ~~affected~~ 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 paragraph shall be deemed a violation of this article subject to the remedies of section 21-84.

(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 ordinance.

(~~b~~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 21-85(ed), shall the wage rates paid pursuant to that contract be less than the minimum livable wage paid pursuant to this article.

(ed) Notwithstanding subsection 21-85(~~b~~c), 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.

(~~d~~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.

(ef) 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.

Sec. 21-86. - Exemptions.

An ~~partial or complete~~ exemption from ~~the~~ any requirement of this article may be requested for a period not to exceed two (2) years:

(a) By a covered employer where payment of the livable wage ~~authorized based upon a determination that compliance with the livable wage requirement~~ would cause substantial economic hardship; and

(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 ~~provision or~~ provisions or where granting the exemption would be in the best interests of the City.

A covered employer or grantee granted an exemption under this Section 21-86 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 ~~board~~ of the ~~city~~ 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. ~~shall consider the request for exemption with prior notice provided to the city council. A unanimous decision by the finance board shall be final. A split decision by the finance board is reviewable by the city council not later than the next meeting of the city council which occurs after the date of the finance board decision.~~

Sec. 21-87. - Severability.

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.

Section 21-88. Annual Reporting.

On or before April 15th of each year, the City Attorney's office shall submit a report to the City Council that provides the following information:

(a) ~~all~~ list of all covered employers broken down by department;

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

(c) all complaints filed and investigated by the City Attorney's office and the results of such investigation.

Sec. 21-89. Effective Date.

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

* Material stricken out deleted.
** Material underlined added.

lb/EBlackwood/c: Ordinances 2013/Offenses & Misc..Provisions, Article VI – Livable Wages, Sections 21-80 - 21-89
9/18/13; 10/16/13; 10/21/13

Attachment D

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

I, _____, on behalf of _____ (Contractor/Consultant) and in connection with the _____ (project), hereby certify under oath that (1) Contractor shall comply with the City of Burlington's Livable Wage Ordinance; (2) as a condition of entering into this contract or grant, Contractor confirms that all covered employees, as defined by Burlington's Livable Wage Ordinance, shall be paid a livable wage for the term of the contract as determined and adjusted annually by the City of Burlington's Chief Administrative Officer, (3) a notice regarding the applicability of the Livable Wage Ordinance shall be posted in the workplace or other location where covered employees work, and (4) payroll records or other documentation, as deemed necessary by the Chief Administrative Officer, shall be provided within ten (10) business days from receipt of the City's request.

Dated at _____, Vermont this ____ day of _____, 2016.

By:_____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary

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, it does not currently, nor will it over the life of the contract provide union deterrence services in violation of the City's union deterrence ordinance.

Dated at _____, Vermont this ____ day of _____, 2016.

By:_____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary