

**CITY OF BURLINGTON
NORTH AVENUE INTERSECTION IMPROVEMENTS AT
ETHAN ALLEN PARKWAY**

Request for Proposals

Engineering Services

City of Burlington, April 25, 2018

Questions Due: May 11, 2018 5pm

Answers to be Posted: May 18, 2018

Proposals Due: May 30, 2018 2pm

I. PROJECT BACKGROUND

In the interest of improving safety and operational efficiency, the City of Burlington (City) is seeking engineering services for a project to construct improvements at the intersections of North Avenue and Ethan Allen Parkway. Conceptual plans for these intersections have been developed for the 2015 North Avenue Corridor Study and the 2005 North Avenue Intersection Scoping Study which can be downloaded from the City's website at <https://www.burlingtonvt.gov/DPW/Links-Library>.

Construction will include signal upgrades, curbs, pavement markings, signage, lighting, and other materials as needed. Construction for the Ethan Allen Parkway intersection is desired in 2019.

Unless otherwise noted, the terms and conditions set forth in the Appendix are included in the requirements for this project.

The lead local contact and administrative support for the project is Ashley Toof, Public Works Engineer, Burlington Department of Public Works, 645 Pine Street, Burlington, VT 05402 – phone (802) 540-2547 or email atoof@burlingtonvt.gov.

II. SCOPE OF WORK

In general, the scope of this project will follow the project development process used by the Local Projects section of VTrans as follows:

- A.) Project kick-off and development of conceptual plans
- B.) Development of preliminary plans and specifications, and preliminary cost estimates
- C.) Develop Right of Way (ROW) plans, if necessary, and assist with ROW documents
- D.) Develop contract plans, technical specifications, final engineer's estimate and bid documents

This design project is being funded by the City. As these designs advance, work with the Department of Public Works to engage the Department of Parks Recreation and Waterfront, North End City Councilors, City Council Transportation Energy and Utilities Committee, New North End residents, and users of North Avenue.

At the intersection of North Avenue and Ethan Allen Parkway, design intersection improvements that will:

- Relocate the vehicular entrance to Ethan Allen Park to remove this access point from the signalized intersection and onto Ethan Allen Parkway;
- Consider how to incorporate Little Eagle Bay into the timing directive and improve level of service;
- Consider how to incorporate a right turn lane for northbound traffic on North Avenue turning into Ethan Allen Parkway;
- Improve facilities for vehicles, pedestrians, and bicycles.

At the intersection of North Avenue, design intersection improvements that will:

- Incorporate pedestrian and bicycle facilities into the final design;
- Assess the preferred alternative from previous scoping/corridor studies, make a final recommendation to the City for final design of either a roundabout or signalization improvements, and complete design of the selected option;
- Remove the existing overhead sign structures.

The development of Conceptual Plans through Final Plans, Specifications and Estimates will consist of the following tasks.

Phase A- PROJECT DEFINITION

Task 1: Project Kick-off

The Consultant will convene a project kick-off meeting to discuss the goals and objectives of the municipality and define the project development process. The Consultant will discuss the project schedule and arrange to collect all information relevant to the project, including all existing project files, underground utility information, tax maps of the affected properties, etc. The Consultant will coordinate and schedule this meeting and prepare meeting minutes to document the discussions and decisions made, and distribute the minutes to all stakeholders.

Task 2: Topographic Survey and Base Mapping

2.1: Right-of-Way and Deed Information

The Consultant is to develop a base map showing the approximate limits of the existing Right-of-Way. The municipality will provide available roadway plans, land records, property deeds and tax maps on file for the properties within the project limits. The purpose will be to document the property lines and owners within the project limits for subsequent Right-of-Way use. This right of way and property information will be compiled and presented on the plans.

2.2: Utility Location

The Consultant shall identify all existing overhead and underground utilities possibly affected by project construction and depict their location on project plans.

2.3: Ground Survey

The Consultant will perform the topographic survey for this project in general accordance with VTrans' survey guidelines and requirements. The survey will include enough information to design, permit, acquire Right-of-Way and construct the project.

Task 3: Conceptual Plans

The Consultant will prepare Conceptual Plans and a conceptual construction cost estimate for the improvements. It is anticipated that these two intersections will be constructed under separate construction contracts. Separate plan sets and estimates shall be developed for each intersection. The Conceptual Plans will indicate the existing topography and other base information, and illustrate the proposed work. The design will be in accordance with the Vermont Pedestrian and Bicycle Facility Planning and Design Manual, 2011 VTrans Standard Specifications for Construction, the current editions of the Vermont State Standards, the Public Rights of Way Accessibility Guidance issued by the US Access Board, the most recent edition of the Manual on Uniform Traffic Control Devices, and the most recent editions of the NACTO Design Guides. Identified rights-of-ways, utilities, natural and cultural resources, and other features affecting the design will be indicated on the plans. The basis for project pay items will be the 2011 VTrans Standard Specifications for Construction. If the project falls primarily within the right of way of a state highway, the plans shall be developed using MicroStation software and shall generally follow the 2008 VTrans CADD Standards and Procedure - <http://vtranscaddhelp.vermont.gov/>.

The Conceptual Plans are anticipated to consist of, but not be limited to:

- Title Page
- Layout Sheets showing existing and proposed features
- Quantity Sheets
- Preliminary profiles
- Approximate right of way lines and construction limits (consultant shall provide supporting information addressing how right of way limits were determined)
- Typical Sections for the proposed improvements
- Cross Sections

Together, these drawings illustrate the information necessary to define the project and will include information such as:

- Roadway, sidewalk and/or path design (Cross Slope, material type, and Thickness)
- New or modified subsurface drainage
- Limits of Construction
- Pavement Markings and signs

The Consultant will submit two full size copies of the Conceptual Plans and construction cost estimate to the municipality, along with one set of the plans and estimate in PDF format. The conceptual cost estimate will be prepared in the standard VTrans Estimator format and will be submitted as both an Estimator file (.est) and in PDF format. The consultant will develop the construction cost estimate utilizing individual items and unit prices.

The Consultant shall present the Conceptual Plans with the City at one public meeting during the conceptual plans phase of this project.

Task 4: Resource Constraints

The Consultant is expected to identify natural and cultural resources on the project plans to support a future need for a Categorical Exclusion document.

4.1: Natural Resource Identification

The Consultant will confirm the presence or absence of any known natural resources in the project vicinity and will identify these resources on plans of the project area.

4.2: Historical/Archaeological

The Consultant will determine any historical or archaeological impacts.

4.3: Other Permitting and Investigations

The Consultant will determine the need for other environmental permits and will assist the municipality in acquiring all necessary federal, state, and local environmental permits necessary to complete the project. The municipality is generally responsible for any permit fees, although these are waived for some permits.

Phase B- PROJECT DESIGN**Task 5: Preliminary Plans**

The Preliminary Plans will include all the information from the Conceptual Plans and will add further detail, including any stormwater drainage and required erosion prevention and sediment control measures. It is anticipated that these two intersections will be constructed under separate construction contracts. As such, a separate Preliminary Plan set should be developed for each intersection. The Preliminary Plans shall include, but not be limited to:

- Title Sheet
- Quantity Sheets
- Typical Sections
- Base Plan with a project centerline and existing ROW information
- Profiles
- Cross Sections
- Driveway treatments
- Drainage details
- Erosion Prevention measures and details
- Signs and pavement markings
- Lighting
- Traffic control plans for motor vehicles and pedestrians

In addition to the Preliminary Plans, the Consultant will develop a revised Engineer's Estimate for each intersection.

A submittal to the municipality is expected at this stage for review. The plans and estimate will be submitted in a PDF format. All comments and changes resulting from the review will be addressed by the Consultant in the subsequent set of plans.

Task 6: Right-of-Way Plans and Acquisition Process

Using the project construction limits and any anticipated need for temporary rights during construction, the need for additional right of way will be confirmed by the Consultant. They will determine if any additional right-of-way (ROW), including all permanent and temporary easements, beyond the existing ROW is required to construct the project. If the project is in a state highway ROW, it will require a VTrans State Highway Access and Work Permit and the consultant will work with the City to obtain this permit from VTrans.

6.1: Right of Way Plans

Existing ROW, and all areas of additional ROW, whether temporary or permanent, will be clearly indicated on ROW plans prepared by the consultant in accordance with standard survey practices. Draft ROW plans and draft easements (easements by City) will be submitted to the City for review and approval prior to negotiating with property owners. ROW plans must include all of the elements of preliminary plans with the addition of the following:

- Right-of-Way detail sheet
- Property Acquisition Table

In the event Right-of-Way acquisition is simple and/or does not involve many parcels, it is acceptable to include Right-of-Way information on the project plan sheets.

6.2: Right of Way Coordination

The City of Burlington will be responsible for appraisals, negotiations and completing the acquisitions. The Consultant will provide assistance and work closely with the City throughout the ROW phase, including any Necessity and Condemnation procedures. ROW acquisition must conform to Public Law 91-646 and 100-17, which together are referred to as the “Uniform Act.”

Task 7: Final Design/Bidding

The Consultant will prepare the final construction design of the project. Final Design will include final plans, an updated construction cost estimate, and draft special provisions. These provisions will supplement the VTrans Standard Specifications for Construction (2011) which will serve as the basis for the construction of the project. It is anticipated these two intersections will be constructed under separate construction contracts. Separate plan sets and estimates shall be developed for each intersection. Final plans will be submitted to the City for review and comments. If Federal or State funding is granted for this project, plans, specifications and estimates will also be submitted to VTrans for review and comment. All comments and changes resulting from the review will be addressed by the consultant in the following set of plans. The Contract Plans will include all information necessary to put the project out to bid.

7.1: Final (85%) Plans

The Consultant will submit Final Plans along with an updated listing of items and quantities, and an associated cost estimate for municipal review and concurrence. These plans will incorporate all comments and conditions received from permitting agencies. Final utility relocations will be shown. ROW plans (if necessary) showing acquisition lines and any agreements made with property owners will be included. The Consultant will certify through the signature of an engineer registered in the state of Vermont to practice “structural or civil” engineering that these plans and subsequent 100% plans meet all applicable standards, codes and requirements for design and public safety. The Consultant will also provide a “Utility Clearance” indicating all necessary utility coordination has been completed.

7.2: Special Provisions

The Consultant will develop any project special provisions to cover items not contained in the VTrans 2011 Standard Specifications for Construction or those items that vary from the standard specifications.

7.3 Final Estimate

The Consultant will develop a final engineer’s estimate for each intersection.

Task 8: Contract Plans

The Consultant will take all the necessary steps to provide the municipality with a complete package for each intersection which can be put out to bid.

8.1: Contract Plans

The Consultant will submit Contract (100%) Plans along with an updated list of items, quantities and an associated cost estimate for municipal review and concurrence. These plans will incorporate any final changes since the review and acceptance of 85% Plans. These plans will be signed and stamped by the Consultant’s licensed PE.

8.2: Construction Bid Package

Once the Contract Plans are approved, the Consultant will be responsible for assembling the Construction Bid Package for each intersection. The complete Construction Bid Package shall include, but not be limited to:

- Complete Contract (100%) plans.
- Construction cost estimate.
- Final utility relocations, clearances, and special provisions.
- Right-of-way clearances and special agreements.
- Construction special provisions.
- All necessary permits acquired and conditions noted.

- Construction Contract specifications.

Bid Documents including instructions to bidders, bid form and all required federal documents (Note: VTrans has developed a bid document template that may be used as a starting point.)

III. RESPONSE FORMAT

Responses to this RFP should consist of the following:

A.) A technical proposal consisting of:

1. A cover letter expressing the firm's interest in working with the City including identification of the principal individuals who will provide the requested services.
2. A description of the general approach to be taken toward completion of the project, an explanation of any variances to the proposed scope of work as outlined in the RFP, and any insights into the project gained as a result of developing the proposal.
3. A scope of work containing the proposed tasks to be completed, including any products or deliverables resulting from each task.
4. A summary of estimated labor hours by task clearly identifying the project team members and the number of hours performed by each team member by task.
5. A proposed schedule indicating project milestones and overall time for completion.
6. A list and resumes of individuals committed to this project and their professional qualifications. The names and qualifications of any sub-consultants shall be included in this list.
7. Demonstration of success on three similar projects, including a brief project description and a contact name and address for each reference.
8. Provide signed and notarized Certification of Compliance with the City of Burlington's Livable Wage Ordinance which is attached to this RFP.

Please note Items 1 – 5 should be limited to a total of 15 pages.

B.) A separate cost proposal consisting of a composite schedule by task of direct labor hours, direct labor cost per class of labor, overhead rate, and fee for the project. If the use of sub-consultants is proposed, a separate schedule must be provided for each.

IV. CONSULTANT SELECTION

Consultant selection will be made by a committee of City of Burlington representatives. Each proposal will be evaluated considering the following weighted criteria:

Criteria	Weight	Maximum Points	Weighted Total
1. Understanding the Scope of Work and Proposed Approach	4	5	20
2. Knowledge of Project Area	2	5	10
3. Qualifications/Experience of Proposed Staff	3	5	15
4. Availability of Technical Disciplines	3	5	15
5. Past Performance on Similar Projects	4	5	20
6. Reasonableness of Proposed Schedule and Labor Hour Estimates	4	5	20

The selection committee may elect to interview consultants prior to final selection.

The committee will select the consultant on or about June 8, 2018.

V. SUBMISSIONS

Consultants interested in this project should submit one (1) hard copy and one (1) electronic copy of their proposal to:

Ashley Toof, Public Works Engineer
Burlington Department of Public Works
645 Pine Street, Burlington, VT 05402

Technical and cost proposals must be submitted in separate, sealed envelopes or packages with the following information clearly printed on the outside

1. Name and address of prime consultant
2. Due date and time
3. Envelope contents (technical or cost proposal)
4. Project name

Proposals should be double-sided and use recycled paper, if possible. Twin pocket portfolios or other simple, re-usable binding method is recommended. Electronic copies shall be in PDF format and on a flash drive.

Questions about the project should be directed to Ashley Toof at the above address or at:

Telephone: (802) 540-2547

E-mail: ***atoof@burlingtonvt.gov***

All proposals must be received by the City no later than 2:00 PM on May 30, 2018. Proposals and/or modifications received after this time will not be accepted or reviewed. No facsimile-machine produced or emailed proposals will be accepted. All proposals upon submission become the property of the City.

VI. CONTRACTING

The Consultant, prior to being awarded a contract, shall apply for registration with the Vermont Secretary of State's Office to do business in the State of Vermont, if not already so registered. The registration form may be obtained from the Vermont Secretary of State, 128 State Street Montpelier, VT 05633-1101, PH: 802-828-2363, Toll-free: 800-439-8683; Vermont Relay Service – 711; web site: <https://www.sec.state.vt.us/>. The contract will not be executed until the Consultant is registered with the Secretary of State's Office. The successful Consultant will be expected to execute sub-agreements for each sub-consultant named in the proposal upon award of this contract.

Prior to beginning any work, the Consultant shall obtain Insurance Coverage in accordance with the Burlington Standard Contract Conditions. The certificate of insurance coverage shall be documented on forms acceptable to the City.

The cost of preparing, submitting and presenting is the sole expense of the firm. The City reserves the right to reject any and all proposals received as a result of this solicitation or to cancel this RFP in part or in its entirety if it is in the best interests of the City. This Request for Proposals in no way obligates the City to award a contract.

VII. REJECTION OF PROPOSALS

Notwithstanding the above selection process, 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 Engineer's schedule. The City reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals.

ATTACHMENT A - BURLINGTON STANDARD CONTRACT CONDITIONS

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:

AGC	Associated General Contractors of America
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
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EDM	Electronic Data Media
FSS	Federal Specifications and Standards
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
VOSHA	Vermont Occupational Safety and Health Act
VSA	Vermont Statutes Annotated
WEF	Water Environment Association

(a) **INDEMNIFICATION:**

The CONTRACTOR will act in an independent capacity and not as officers or employees of the CITY. The CONTRACTOR shall indemnify, defend and hold harmless the CITY and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the CONTRACTOR's negligent acts and/or omissions in the performance of this contract.

(b) **RELATIONSHIP:**

The parties agree that the CONTRACTOR is an independent CONTRACTOR. To that end, the CONTRACTOR shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. City shall provide the CONTRACTOR with no specific instructions or training in how to provide the required services, except to the extent required by law or regulation. The CONTRACTOR shall provide its own tools, materials or equipment. The parties agree that neither the CONTRACTOR nor its Principal is an employee of City or any of its departments, agencies, or related entities. The parties also agree that neither the CONTRACTOR nor its Principal is entitled to any employee benefits from City. CONTRACTOR understands and agrees that it and its Principal have no right to claim any benefits under the Burlington Employee Retirement System, City's worker's compensation benefits, health insurance, dental insurance, life insurance or any other

employee benefit plan offered by City. The CONTRACTOR agrees to execute any certifications or other documents and provide any certificates of insurance required by City and understands that this contract is conditioned on its doing so, if requested.

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

(c) INSURANCE:

Prior to beginning any work, the CONTRACTOR shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the CITY. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the CITY, must be received prior to the effective date of the Agreement. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the CITY. In the event that this 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 worker's compensation) shall name the CITY as an additional insured for the possible liabilities resulting from the CONTRACTOR's actions or omissions. It is agreed that the liability insurance furnished by the CONTRACTOR is primary and non-contributory for all the additional insured.

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

(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 CONTRACTOR.

(b) All coverage shall include adequate protection for activities involving hazardous materials.

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

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

GENERAL LIABILITY AND PROPERTY DAMAGE:

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

1. Premises Operations
2. Independent CONTRACTORS' Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Contractual Liability
6. Broad Form Property Damage
7. Medical Expenses
8. Collapse, Underground and Explosion Hazards

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

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

- (a) Bodily Injury by Accident: \$500,000 each accident
- (b) Bodily Injury by Disease: \$500,000 policy limit, \$500,000 each employee

PROFESSIONAL LIABILITY INSURANCE:

- (a) General. The Contractor shall carry architects/engineers professional liability insurance covering errors and omissions made during their performance of contractile duties with the following minimum limits:
 - \$2,000,000 - Annual Aggregate
 - \$2,000,000 - Per Occurrence
- (b) Deductibles. The CONTRACTOR is responsible for any and all deductibles.
- (c) Coverage. Prior to performing any work, the Contractor agrees to provide evidence of E&O insurance coverage defined under this Section. In addition, the Contractor agrees to attempt to maintain continuous professional liability coverage for the period of the agreement and whenever applicable any construction work related to this agreement, and for a period of five years following substantial completion, if such coverage is reasonably available at commercially affordable premiums.

AUTOMOBILE LIABILITY: The CONTRACTOR shall carry commercial automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in

connection with the agreement. Each policy shall provide coverage with a limit not less than: \$1,000,000 - Combined Single Limit for each occurrence.

UMBRELLA LIABILITY:

\$1,000,000 Each Event Limit

\$1,000,000 General Aggregate Limit

COMPLIANCE WITH LAWS

(d) GENERAL COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable Federal, State and local laws, including but not limited to the Burlington Livable Wage Ordinance, the Non-Outsourcing Ordinance and the Union-Deterrence Ordinance and shall provide the required certifications attesting to compliance with these ordinances (see attached ordinances and certifications).

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

(e) CIVIL RIGHTS and EQUAL EMPLOYMENT OPPORTUNITY

During performance of the Agreement, the CONTRACTOR will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, sexual orientation, gender identify, national origin, physical disability or veteran status.

The CONTRACTOR shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR Part 60). The CONTRACTOR 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 CONTRACTOR 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.

(f) CHILD SUPPORT PAYMENTS

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

does not apply.

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

CONTRACTUAL AGREEMENTS

- (h) **REGISTRATION:** The CONTRACTOR agrees to be registered with the Vermont Secretary of State's office as a business entity doing business in the State of Vermont at all times this contract is effective. This registration must be complete prior to contract execution.
- (i) **PERSONNEL REQUIREMENTS AND CONDITIONS:** A CONTRACTOR shall employ only qualified personnel, for responsible authority to supervise the work. The CITY shall have the right to approve or disapprove key personnel assigned to administer activities related to the Agreement.

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

- (a) Personnel on the payroll of the CITY who are directly involved with the awarding, administration, monitoring, or performance of the Agreement or any project(s) that are the subjects of the Agreement.
- (b) Any person so involved within one (1) year of termination of employment with the CITY.

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

The CITY reserves the right to require removal of any person employed by a CONTRACTOR, from work related to the Agreement, for misconduct, incompetence, or negligence, 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 Agreement.

- (j) **TRANSFERS, SUBLETTING, ETC:** A CONTRACTOR shall not assign, sublet, or transfer any interest in the work, covered by an Agreement, without prior written consent of the CITY and further, if any SUB-CONTRACTOR participates in any work involving

additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the CITY. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the CONTRACTOR of responsibility for the performance of that portion of the work so transferred. The form of the SUB-CONTRACTOR's agreement shall be as developed by the CONTRACTOR and approved by the CITY. The CONTRACTOR shall ensure that insurance coverage exists for any operations to be performed by any SUB-CONTRACTOR as specified in the insurance requirements section of this agreement.

The services of the CONTRACTOR, to be performed under the Agreement, 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 the original agreement with the CITY.

- (k) **CONTINUING OBLIGATIONS:** The CONTRACTOR agrees that if because of death or other occurrences, it becomes impossible to effectively perform its services in compliance with the Agreement, neither the CONTRACTOR nor its surviving members shall be relieved of their obligations to complete the Agreement. However, the CITY may terminate the Agreement if it considers a death or incapacity of any members to be a loss of such magnitude that it would affect the firm's ability to satisfactorily execute the Agreement.
- (l) **OWNERSHIP OF THE WORK:** The CONTRACTOR agrees that the ownership of all studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM and other material prepared or collected by the CONTRACTORS, hereafter referred to as "instruments of professional service", shall become the property of the CITY as they are prepared and/or developed during execution of the Agreement. The CONTRACTOR agrees to allow access to all "instruments of professional service" at any time. The CONTRACTOR shall not copyright any material originating under the Agreement without prior written approval of the CITY. No publications or publicity of the work, in part or in total, shall be made without the agreement of the CITY, except that CONTRACTORS may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.
- (m) **PROPRIETARY RIGHTS:** The parties under the Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Agreement, all rights accruing from such discoveries or inventions shall be the sole property of the CONTRACTOR. The CONTRACTOR, however, agrees to and does hereby grant to the CITY an irrevocable, nonexclusive, non-transferable, and royalty-free license to practice each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the Agreement.
- (n) **PUBLIC RECORDS:** The CONTRACTOR understands that any and all records related to and acquired by the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City. The CONTRACTOR shall identify all records that it considers to be trade secrets as that term is defined by

subsection 317(c)(9) of the Vermont Public Records Act and shall also identify all other records it considers to be exempt under the Act. It is not sufficient to merely state generally that the record is proprietary or a trade secret or is otherwise exempt. Particular records, pages or section which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

- (o) **OWNERSHIP OF DOCUMENTS:** Proposals, plans, specifications, basis of designs, electronic data, designs and reports prepared under any agreement between the selected Engineer and the city shall become the property of the City. Records shall be furnished to the City by the Engineer upon request at any time, however the Engineer may retain copies of the original documents.
- (p) **RECORDS RETENTION:** The CONTRACTOR agrees to retain, in its files, and to produce to City within the time periods requested, all books, documents, EDM, accounting records, and other evidence related to City, at any time during this Agreement and for a period of at least three (3) years after its termination. The CONTRACTOR further agrees that the CITY shall have access to all the above information for the purpose of reviewing and audit during the Agreement period and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the CITY if requested. CONTRACTOR, SUB-CONTRACTORS, or any representatives performing work related to the Agreement, are responsible to insure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage.
- (q) **APPEARANCES:**
- (a) Hearings and Conferences. The CONTRACTOR shall provide professional services required by the CITY and necessary for furtherance of any work covered under the Agreement. Professional services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its contractual services covered under the Agreement.
- The CONTRACTOR shall perform any liaison that the CITY deems necessary for the furtherance of the work and participate in conferences with the CITY, at any reasonable time, concerning interpretation and evaluation of all aspects covered under the Agreement.
- The CONTRACTOR further agrees to participate in meetings with the CITY and any other interested or affected participant, for the purpose of review or resolution of any conflicts pertaining to the Agreement.
- The CONTRACTOR shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto in accordance with the Contract document.
- (b) Appearance as Witness. If and when required by the CITY, a CONTRACTOR, or an appropriate representative, shall prepare and appear for any litigation concerning

any relevant project or related Agreement, on behalf of the CITY. The CONTRACTOR shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Contract document.

- (r) **CHANGES AND AMENDMENTS:** No changes or amendments of the Agreement shall be effective unless documented in writing and signed by authorized representatives of the CITY and the CONTRACTOR.
- (s) **APPENDICES:** The CITY may attach, to these specifications, appendices containing various forms and typical sample sheets for guidance and assistance to the CONTRACTOR in the performance of the work. It is understood, however, that such forms and samples may be modified, altered, and augmented from time to time by the CITY as occasions may require. It is the responsibility of the CONTRACTOR to ensure that they have the latest versions applicable to the Agreement.
- (t) **EXTENSION OF TIME:** The CONTRACTOR agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by the CONTRACTOR for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the CITY may decide. Time extensions shall be granted by amendment, only for excusable delays, such as delays beyond the control of the CONTRACTOR and without the fault or negligence of the CONTRACTOR.
- (u) **SETTLEMENTS OF MISUNDERSTANDINGS:** In order to prevent misunderstandings and litigation, it is mutually agreed by all parties that the City Engineer shall act as referee on all questions arising under the terms of an Agreement and that the decision of this governing body in such cases shall be binding upon both parties.

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

CONTRACTOR 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 CONTRACTOR must file the Municipality 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 CONTRACTOR 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.

- (v) **FAILURE TO COMPLY WITH TIME SCHEDULE:** It is mutually understood and agreed to, that neither party hereto shall be held responsible for delay in performing the work encompassed herein, when such delay is due to unforeseeable causes such as acts of God, or a public enemy, fire, strikes, floods, or legal acts of public authorities. In the event that any such causes for delay are of such magnitude as to prevent the complete

performance of the Agreement within two (2) years of the originally scheduled completion date, either party may by written notice request to amend or terminate the Agreement.

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

- (a) Breach of Contract. Administrative remedies - the CITY reserves the right to terminate a Contract for breach of Contract agreements. Termination for breach of Contract will be without further compensation to the CONTRACTOR.
- (b) Termination for Cause. The CITY reserves the right, upon written notice to the CONTRACTOR, to terminate the Agreement, as of a date to be specified by the CITY, if the CONTRACTOR fails to complete the designated work to the satisfaction of the CITY, within the time schedule agreed upon. The CONTRACTOR shall be compensated on the basis of the work performed and accepted by the CITY at the date of final acceptance of the Agreement.
- (c) Termination for Convenience. In addition to its rights and options to terminate an Agreement as provided herein, the CITY may, at any time prior to completion of services specified under an Agreement, terminate the Agreement by submitting written notice to a CONTRACTOR, within not less than fifteen (15) days prior to the effective date, via certified or registered mail, of its intention to do so. If the termination is for the CITY's convenience, payment to the CONTRACTOR will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made. However, if a notice of termination is given to a CONTRACTOR prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the CONTRACTOR will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination, that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the CITY's approval. The CONTRACTOR shall make no claim for additional compensation against the CITY by reason of such termination.

(x) **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.

OPERATIONAL STANDARDS

(y) **RESPONSIBILITY FOR SUPERVISION:** The CONTRACTOR shall assume primary responsibility for general supervision of CONTRACTOR employees and his/her or their SUBCONTRACTORS 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 Agreement.

- (z) **INDEPENDENCE:** The CONTRACTOR shall act in an independent capacity and not as officers or employees of the CITY.
- (aa) **UTILITIES:** Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the CONTRACTOR will counsel with the CITY, plus achieve any necessary contacts and discussions with the affected owners, regarding any requirement necessary for revisions of facilities or existing installations, both above and below ground. Any such installations must be completely and accurately exhibited on any detail sheets or plans. The CONTRACTOR shall inform the CITY, in writing, of any such contacts and the results thereof.
- (bb) **PUBLIC RELATIONS:** Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the CONTRACTOR will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the CONTRACTOR shall conduct themselves with propriety. The CONTRACTOR agrees to inform property owners and/or tenants, in a timely manner, if there is need for entering upon private property as an agent of the CITY, in accordance with VSA Title 19 § 35 and §503, in order to accomplish the work under the Agreement. The CONTRACTOR agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the CONTRACTOR, the CITY shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the CONTRACTOR is acting as an agent of the CITY.
- (cc) **INSPECTION OF WORK:**
The CITY shall, at all times, have access to the CONTRACTOR's work for the purposes of inspection, accounting, and auditing, and the CONTRACTOR shall provide whatever access is considered necessary to accomplish such inspections. At any time, the CONTRACTOR shall permit the CITY or representative for the CITY the opportunity to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the CONTRACTOR pursuant to execution of the Agreement.
- Conferences, visits to a site, or an inspection of the work, may be held at the request of any involved party or by representatives of the CITY.
- (dd) **RETURN OF MATERIALS.** CONTRACTOR agrees that at the termination of this Agreement, it shall return to City all materials provided to it during its engagement on behalf of City.

PROJECT DEVELOPMENT AND STANDARDS

- (ee) **PLANS RECORDS AND AVAILABLE DATA:**
The CITY agrees to make available, at no charge, for the CONTRACTOR's use all available data related to the Agreement including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.
- (ff) **DESIGN STANDARDS:** Unless otherwise specifically provided for in the Agreement, or directed in writing, CONTRACTOR services, studies or designs, that include or make

reference to plans, specifications, special provisions, computations, estimates, or other data 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 Agreement:

- (a) VTRANS'S latest edition of the Standard Specifications for Construction.
- (b) VTRANS'S Bridge Design Manual.
- (c) All applicable AASHTO roadway, traffic, bridge, bicycle and pedestrian policies, guides and manuals.
- (d) VTRANS'S Manual on Survey.
- (e) VTRANS'S Right-of-Way Manual.
- (f) The Highway Capacity Manual - Special Report 209.
- (g) The ANSI/AASHTO/AWS D-1.5, Bridge Welding code.
- (h) The MUTCD and Vermont Supplement requirements.
- (i) The Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals
- (j) Other CITY directives and guidelines current at the time of the Agreement and as may be issued by the CITY during the progress of the design.

In case of any conflict with the guidelines referenced, the CONTRACTOR is responsible to identify and follow any course of direction provided by the CITY.

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

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

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

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

- (hh) **BINDING NATURE AND JURISDICTION**

This agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors or heirs and representatives, and assigns. This agreement shall be governed by Vermont law, and the CONTRACTOR expressly agrees to submit to the jurisdiction of the courts of the State of Vermont.

PAYMENT FOR SERVICES RENDERED:

- (ii) **PAYMENT PROCEDURES:** The CITY shall pay, or cause to be paid to the CONTRACTOR

or the CONTRACTOR's legal representative, payments in accordance with the Agreement. When applicable, for the type of payment specified in the Agreement, the progress report shall summarize actual costs and any earned portion of fixed fee.

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

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

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

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

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

(jj) **PAYMENT FOR ADDITIONS OR DELETIONS:** The CITY may, upon written notice, and without invalidating the Agreement, require any changes to, additions to, or deletions from, the originally contemplated extent of the work, prior to completion of the Agreement by means of an amendment to the original Agreement. Any adjustments of this nature shall be executed under the appropriate fee established in the Agreement, 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.

(kk) **PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES:** The CITY may, upon written notice, and without invalidating the Agreement, require changes resulting from revision or abandonment of work already performed by the CONTRACTOR or changes in the scope of work.

The value of such changes, to the extent not reflected in other payments to the CONTRACTOR, shall be incorporated in an amendment and be determined by mutual agreement, 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 CONTRACTOR's expenses experienced in performing the work. The CONTRACTOR is fully responsible for all costs and resulting profit or loss.

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

(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 CONTRACTOR agrees to maintain complete and accurate records, in a form satisfactory to the CITY for all time devoted directly to same by CONTRACTOR employees. The CITY reserves the right to audit the records of the CONTRACTOR related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Agreement. When changes are so ordered, no additional work shall be performed by the CONTRACTOR until an Agreement amendment has been fully executed, unless written notice to proceed is issued by the CITY. Any claim for extension of time, 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 B – CITY OF BURLINGTON’S LIVABLE WAGE ORDINANCE

CITY OF BURLINGTON

10.

revised version

In the Year Two Thousand Thirteen

An Ordinance in Relation to

OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

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

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 Sections 21-80 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.

OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

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 ~~subcontractor~~ 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.

OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

(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.

(fg) 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.)

(gh) 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:

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OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

(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 (~~\$13.949.90~~) 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 (~~\$15.8344.68~~) per hour on the effective date of the amendments to this article [Dec. 19, 2001].

(3) ~~Tipped covered employees and other ee~~ 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_ivable w_age as established under this article.

(b) The amount of the L_ivable w_age 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.~~

OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

(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.

OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

(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; and

(iv) To refer credible 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

OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

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.

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

(fde) 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) 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) Reinstatement in employment and/or injunctive relief; and
- (v) Reasonable attorneys' fees and costs.

(gj) 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

OFFENSES AND MISCELLANEOUS PROVISIONS–
ARTICLE VI - Livable Wages

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.

(bc) 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(bc), 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.

(ée) 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.

OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

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:

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OFFENSES AND MISCELLANEOUS PROVISIONS--
ARTICLE VI - Livable Wages

An Ordinance in Relation to

- (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 C

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

I, _____, on behalf of _____ (“the Contractor”) in connection with a contract for _____ services that we provide to the City, hereby certify under oath that the Contractor (and any subcontractors under this contract) is and will remain in compliance with the City of Burlington’s Livable Wage Ordinance, B.C.O. 21-80 et seq., and that

(1) as a condition of entering into this contract or grant, we confirm that all covered employees as defined by Burlington’s Livable Wage Ordinance (including the covered employees of subcontractors) shall be paid a livable wage (as determined, or adjusted, annually by the City of Burlington’s chief administrative officer) and provided appropriate time off for the term of the contract;

(2) a notice regarding the applicability of the Livable Wage Ordinance shall be posted in the workplace(s) or other location(s) where covered employees work;

(3) we will provide verification of an employee’s compensation, produce payroll or health insurance enrollment records or provide other relevant documentation (including that of any subcontractor), as deemed necessary by the chief administrative officer, within ten (10) business days from receipt of a request by the City;

(4) we will cooperate in any investigation conducted by the City of Burlington’s City Attorney’s office pursuant to this ordinance; and

(5) we will not retaliate (nor allow any subcontractor to retaliate) against an employee or other person because an employee has exercised rights or the person has cooperated in an investigation conducted pursuant to this ordinance.

Date _____ By: _____
Contractor

Subscribed and sworn to before me:

Date _____
Notary

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ATTACHMENT D

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 _____, 2018.

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary