



**CITY OF BURLINGTON  
DEPARTMENT OF PUBLIC WORKS**

645 Pine Street, Suite A  
Burlington, VT 05401  
802.863.9094 VOICE  
802.863.0466 FAX  
802.863.0450 TTY  
[www.burlingtonvt.gov/dpw](http://www.burlingtonvt.gov/dpw)

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To: DPW Commissioners  
Fr: Chapin Spencer, Director  
Re: **Director's Report**  
Date: January 11, 2018

**WATER/WASTEWATER BILLING ERROR**

The update on the UVM water/wastewater billing error is attached. This is a follow up from my previous memo and briefing to the Commission in December.

**INTERVALE ROAD SCOPING STUDY UNDERWAY**

The CCRPC, City of Burlington and Intervale Center, along with consultant VHB, are partnering on a study to identify walk/bike improvements along Intervale Road. The corridor is increasingly busy with a mix of autos, farm vehicles, large trucks, and pedestrians and cyclists. The study will analyze existing conditions, consider future developments and make recommendations on ways to improve safety for all travelers. The initial public meeting was January 10, 2018. The presentation and more information can be found here: <https://www.ccrpcvt.org/our-work/transportation/current-projects/scoping/intervale-road-pedestrian-bicycle-access-feasibility-study/>.

**PLOWING UPDATES**

The early January deep freeze and high winds made ice and snow management on our roads and sidewalks challenging. To provide context to the public, we provided this update that can be found under Press Releases on our website: <https://www.burlingtonvt.gov/Press/With-Warmer-Temps-Public-Works-to-Redouble-Efforts-to-Clear-City-of-Snow-and-Ice>. If any member of the public identifies a problem area with ice and snow in the public ROW, they are encouraged to report it to us – either through calling our Customer Service team or by reporting it on SeeClickFix.

**GREAT STREETS STANDARDS**

Thank you for the DPW Commission support last month. The BED Commission supported the lighting components of the standards at their January meeting. The standards are already being used to design the new section of St Paul Street between Main and Maple and the new street sections adjacent to City Place Burlington (formerly Burlington Town Center).

**THANK YOU BILLY BURNS!**

After 33+ years of dedicated service to our department, most as the Traffic Forman, Billy Burns has decided to retire. He has excellently managed our traffic and parking operations including painting, signs, meters, parking lots and crossing guards and it will be a real loss to have him go. Billy's frequent self-effacing jokes and his instant rapport with people have only been outmatched by his dedication to our City.

Feel free to reach out with any questions prior to Wednesday's Commission meeting.



City of Burlington  
Department of Public Works  
Water Resources Division  
235 Penny Lane  
Burlington, VT 05401  
802.863.4501 P  
[www.burlingtonvt.gov/DPW](http://www.burlingtonvt.gov/DPW)

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Chapin Spencer  
*PUBLIC WORKS DEPARTMENT DIRECTOR*

Megan Moir  
*WATER RESOURCES DIVISION HEAD*

To: City Council  
Public Works Commission  
Mayor Miro Weinberger  
Fr: Chapin Spencer, Director  
Megan Moir, Assistant Director – Water Resources  
Re: Water & Wastewater Billing Issue – Update and Next Steps  
Date: December 29, 2017

In our December 1, 2018 communication on the Water & Wastewater Billing Issue to the Board of Finance, we pledged to provide a “full update report on our findings and progress resolving any outstanding issues prior to the end of 2017”. This communication provides the end-of-year update. Previously provided information is reiterated in the “Background” section following the update.

**Recent Progress and Next Steps:**

1. Revising Policies and Procedures
  - a. The updated Billing Standard Operating Procedures and Policies document has been provided to KPMG for their review.
2. Third Party Assessment
  - a. A letter of engagement was executed with KPMG (see “Letter of Engagement”)
  - b. An initial kickoff work session was held December 11 – 13 with Water Resources and KPMG. Outcomes included: Training for KPMG on compound meter technology, Flexibill Billing system, review of existing SOPs, development of electronic form for inspection of meters, development of data comparison process, visit of a compound meter in the field to test inspection protocols. (See “Workshop Notes”)
  - c. To date, 26 of the 99 compound meters have been inspected, including 13 at UVM.
  - d. Additional UVM meter inspections are scheduled for the week of January 2.
  - e. An additional 31 meter inspections have been scheduled.
  - f. Next Steps: Continue completing and scheduling meter inspections. Select 10 sites for validation inspection by KPMG and complete validation inspection. KPMG to compare field data with billing date export.
3. Delivering Timely & Comprehensive Reports
  - a. We will deliver our next report on/before February 28. It is expected that the Compound Meter Assessment will be substantially complete by that date.

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Our current goal is to complete the Third Party Assessment by the end of January. However, scheduling challenges related to the holiday season may push the completion of the assessment into the first part of February. That being said, we have benefitted from substantial cooperation by our compound meter customers in scheduling the meter inspections.

Please do not hesitate to contact us with any questions. Thank you.

**Background:**

In mid-November, in the course of investigating UVM's request to review the compound meter at University Heights – South Complex, DPW staff identified a likely billing error. For explanation, compound meters have two meter heads to handle the continuum of flows (ranging from small to large) typical of larger buildings and commercial customers. Based on our current understanding, it seems that when the University Heights – South Complex account was established in 2006, the radio box identification numbers for the small and large meters were transposed when entered into our billing system. As a result, account #70053600, set up for the large meter head, was recording and billing the readings from the small meter head resulting in overcharge on that account. Account #70053590, set up for the small meter head, was recording and billing the readings from the large meter head resulting in an undercharge on that account.

It appears that this error has resulted in a substantial net overcharge of over \$2 million to UVM for these metered accounts for Water and Wastewater. We have notified UVM of this issue, as well as the City's auditor and Moody's – our credit rating agency. While a significant issue, the total overbilling accumulated over a number of years and the City's credit rating agency upgraded the City's credit rating to A2 even after being alerted to this issue.

A billing issue of this significance demands a full and timely response. DPW management immediately alerted the City Attorney's Office, Chief Administrative Officer, and Mayor's Office after uncovering the 2006 error. At the direction of the Mayor, DPW has moved quickly to procure an independent third-party assessment of our compound meter system, conducted an intensive investigation into this issue, and reviewed and improved internal operational procedures. This comprehensive review by a third party as well as DPW staff will determine whether any additional compound meter issues exist and implement enhanced controls moving forward to protect against these errors.

After completing the preliminary investigation, DPW notified UVM Physical Plant on November 22 of this billing anomaly. We also told them that we would hold the upcoming bills on the University Heights accounts until the issue was better understood. We said we would be back in touch by December 15, 2017 with more information.

**Additional Information on the Compound Meter System**

There are 99 compound meters in the City's water distribution system. These meters represent a small percentage of the approximate 10,000 accounts city wide, but the compound meters represent a substantial portion of our community's water usage and resulting revenue to the Water and Wastewater enterprise funds. Given that the compound meters each have two meter heads and two radio communication boxes, there is more complexity in the installation and billing set-up for these accounts.

This error was the second issue we uncovered this year related to the installation of a compound meter . In October 2017, we made a presentation to the Board of Finance outlining a City refund to a commercial customer (Zero Gravity) when we discovered an installation documentation error in the compound meter serving that business. In this case, the error was different than that which caused the overbilling for UVM in that the radio box identification numbers were transposed on the installation documentation – resulting

in a similar situation of overcharging the customer. As a result of this error, DPW Water Resources initiated an internal policy regarding compound meter installations that require two meter technicians to be present for the meter installation and radio box wiring – and for both meter technicians to confirm and sign off on the installation paperwork to ensure the radio box identification numbers are correctly listed.

### **Assessing Weaknesses and Finding Opportunities**

The UVM billing initiation error, while separate and distinct from the Zero Gravity installation issue, shared some common attributes that indicate the need for an in-depth review to ensure there are no additional issues. As described at the December 4, 2018 presentation at the Board of Finance, our full system review includes three main steps:

- 1. Revising Policies & Procedures:** Earlier this year, in response to a FY2015 Audit Management Letter item (#3), DPW Water Resources worked with the Clerk/Treasurers office and auditing firm Sullivan & Powers to complete an internal audit of our Billing Standard Operating Policies and Procedures (SOPs). Our written policies and procedures have been enhanced to further codify distinct procedural improvements and strengthen internal controls particularly around compound meters. Additional controls may be recommended and incorporated through the third-party assessment below.
- 2. Hiring an Auditing Firm to Conduct an Independent Third-party Assessment:** We sought three assessment proposals, received two and brought KPMG’s proposal forward for the Board of Finance’s approval on December 4th to undertake the scope of work summarized below. The executed letter of engagement is attached. We will utilize fund balance from Water and Wastewater funds to pay for this assessment. The scope includes:
  - 1) Reviewing the installation and proper billing account set-up for our 99 existing compound meters – with an initial priority on UVM’s 25 compound meters.
  - 2) Reviewing the meter-to-bill process, providing findings on any material weaknesses, and recommending further revisions to our policies and procedures that we will then implement.
- 3. Delivering Timely and Comprehensive Reports:** We pledged to provide the Mayor, City Council, the Public Works Commission and our customers a full update report prior to the end of 2017 on our findings and progress resolving outstanding issues. Furthermore, we pledged to report every 60 days thereafter until we close out any remaining items on our punch list.

As mentioned in our initial memo, the customer is at the core of all we do at DPW. Team DPW remains fully resolved to find the problems, address all identified issues, and work diligently to not let them happen again. We do want to commend DPW Water Resources staff for their effort to uncover and report these issues and quickly move to implement additional controls to strengthen our metering and billing systems.



**KPMG LLP**  
Two Financial Center  
60 South Street  
Boston, MA 02111  
(617) 988-1278

December 8, 2017

Mr. Chapin Spencer  
Director of Department of Public Works  
645 Pine Street  
Burlington, VT 05401

Dear Mr. Spencer:

On behalf of KPMG LLP (“KPMG”), we appreciate the opportunity to provide the City of Burlington, Department of Public Works (“BDPW”) with professional services to assess compound meters to help ensure that meters are correctly configured and assigned to customer accounts. This letter, which serves as our engagement letter, and the Standard Terms and Conditions (as defined below), set forth the terms of our engagement.

### **Background, Objectives, and Scope**

BDPW has requested a review of their compound metering by an independent party to help ensure that compound meters are correctly configured and mapped to their radio transmitters, customer accounts, and meter multipliers. Compound meters are complex meter configurations used in the delivery of water to large consumption accounts where there are 2 sub-meters to measure high and low pressure water. BDPW has approximately 94 compound meters and they have identified an instance where one compound meter is incorrectly setup in the billing system resulting in potential inaccurate customer billing.

The objectives of this engagement are to inspect the configuration of each meter through photographs and geo-coding, document its settings based on a form provided by BDPW, compare the documented settings to the billing configuration in order to verify that the field meter configurations and billing configurations match. Further, KPMG will review BDPW’s new procedures for compound meter setup (field setup and billing configuration) and provide recommendations for potential improvements.

The scope for the engagement includes reviews of approximately 99 compound meters in and around the City of Burlington, VT, the review of the billing configuration of the meters in the billing system, and review of existing procedures. KPMG will physically visit a random sample of 10 meters and BDPW will visit and document the remaining meters.



## Project Approach and Deliverables

We plan to achieve these objectives using the following approach:

Phase	Activities	Deliverables
1. Mobilize Team and Initiate Project (3 days)	<ul style="list-style-type: none"> <li>• Mobilize team</li> <li>• Submit data requests</li> <li>• Identify and map the compound meters and work with BDPW to develop a site visit schedule starting with the University of Vermont</li> <li>• Work with BDPW to develop an electronic form with specific items to review on each compound meter configuration</li> <li>• Receive safety training, as appropriate</li> <li>• Receive training from Neptune on how to review meters and verify settings</li> <li>• Work with BDPW to schedule site visits</li> <li>• Develop draft deliverable templates and progress trackers</li> </ul>	<ul style="list-style-type: none"> <li>• Data requests</li> <li>• Review of BDPW's compound meter inventory and site visit schedule</li> <li>• Standard compound meter review form</li> <li>• Draft deliverables templates</li> <li>• Project charter, schedule, and communications plan</li> </ul>
2. Conduct Compound Meter Assessment (9 days)	<ul style="list-style-type: none"> <li>• Review documentation including processes, procedures, and policies for meter setup and billing setup including controls and governance</li> <li>• Provide potential risks and recommendations on policies, procedures, and governance over meter setup procedures in the field, meter system, and billing system</li> <li>• Conduct compound meter site assessments and document the findings including pictures for 10 sample meters</li> <li>• Review and compile site assessment documentation gathered by BDPW</li> <li>• Review billing configurations and compare to meter site assessments</li> <li>• Document results and findings</li> <li>• Identify potential issues and risks</li> <li>• Provide updates to BDPW</li> </ul>	<ul style="list-style-type: none"> <li>• Findings report with risks and recommendations based on a review of processes, policies, procedures, and governances for meter and billing configuration setup</li> <li>• Completed compound meter site assessment forms and pictures</li> <li>• Compound meter configuration comparison matrix between observed site information and billing configurations</li> <li>• Findings and recommendations</li> <li>• Status reports including progress, risks, and issues</li> </ul>
3. Develop Report (3 days)	<ul style="list-style-type: none"> <li>• Develop a final report documenting the procedures we performed, risks, findings, and recommendations with supporting documentation</li> <li>• Finalize and close out project</li> </ul>	<ul style="list-style-type: none"> <li>• Final report documenting the procedures we performed, risks, recommendations, and findings with supporting documentation</li> </ul>



## Client Participation and Responsibilities

During the development of this engagement letter, we have been guided by certain assumptions about the project scope and level of BDPW's involvement and support.

BDPW's management will designate a Project Sponsor, a senior member of management who has the requisite skills and competencies for overseeing the services being provided. The Project Sponsor is responsible for establishing the objectives and scope and determine the nature, timing, and extent of testing procedures; for approving the delivery plan; and for maintaining appropriate day-to-day oversight of the KPMG team. In addition, the Project Sponsor will have responsibility for reviewing and approving the engagement documentation and/or deliverables prepared during the engagement that document the results; for reporting the results within BDPW's reporting structure; for evaluating the observations and recommendations that arise from the services; and for monitoring corrective action taken.

BDPW will provide adequate training on safety, meter configurations, and billing configurations. Furthermore, BDPW will schedule our site visits and provide an appropriate and qualified metering resource to escort KPMG resources to each compound metering site.

BDPW represents to KPMG that BDPW has the authority to award this contract to KPMG outside of a formal competitive process, and that award of this contract is made in accordance with all applicable law, regulations, rules, policies, and requirements.

BDPW will inspect and document each of the compound meters in the field including electronic photographs with geocoding, clear images of the meters and identifying information, configuration and so forth.

## Other Matters

KPMG will provide our services in accordance with the terms and conditions of this letter. Our services as outlined in this letter constitute an Advisory Engagement conducted under the American Institute of Certified Public Accounts ("AICPA") Standards for Consulting Services. Such services are not intended to be an audit, examination, attestation, special report, or agreed-upon procedures engagement as those services are defined in AICPA literature applicable to such engagements conducted by independent auditors. Accordingly, these services will not result in the issuances of a written communication to third parties by KPMG directly reporting on financial data or internal control or expressing a conclusion or any other form of assurance. In providing these services, KPMG will undertake no role or view that could be considered public policy advocacy or lobbying.

## Key KPMG Resources

**Engagement Partner.** I will be responsible for the overall engagement quality of service BDPW receives during the conduct of this engagement.

**Engagement Director.** Brian Benton will be the primary resource for coordinating our services, including all work procedures and deliverables.

**Engagement Staff.** We will also assign professionals with the necessary skills and experience to assist with on-site fieldwork as appropriate. We anticipate the use of a core team of resources to assist with project and site assessments, and one or more subject matter professionals to offer insights throughout the engagement, if needed.



### Timing and Professional Fees

We are prepared to begin work upon client and engagement acceptance as well as receipt of a signed copy of this engagement letter at a time mutually determined by BDPW and KPMG.

KPMG professional fees are based upon the specified skill level of the professionals providing the Services and the amount of time and materials required to complete the SOW. KPMG will invoice on a Time & Materials basis monthly at the conclusion of each month.

Resource	Level	Rate/Hour	Estimated Hours	Estimated Cost
Todd Durocher	Partner	\$350	20	\$7,000
Brian Benton	Manager	\$300	60	\$18,000
Mariana Souza	Senior Associate	\$250	120	\$30,000
TBD	Associate	\$170	0	\$0
Estimated Hours & Fees			200	\$55,000
Estimated Expenses (15%)				\$8,250
Estimated Total				\$63,250

In addition to professional fees, KPMG will be reimbursed for out-of-pocket expense. Out-of-pocket expenses include but are not limited to airfare, meals, accommodations, and administrative expenses. Expenses are estimated to be 15% of fees. Throughout the engagement, we will submit monthly invoices for expenses incurred and professional fees based on the table above, with payment due upon receipt. You will be billed \$20,000 upon commencement of our services, which will be credited against future invoices.

The engagement is anticipated to start on December 11, 2017 and complete before January 31, 2018 including field meter documentation by BDWP. This timeline is dependent on the completion of field work by BDWP by January 19, 2018.

Scope changes or circumstances encountered during the engagement that warrant additional time and expense may cause us to adjust the above amounts. We will notify you of any such circumstances as they arise and obtain your approval and agreement before proceeding. Should management require additional hours, more professionals, or a change in the anticipated staffing complement for this engagement, fees for such additional professionals or hours will be commensurate with the experience levels requested and utilized.

### Terms and Conditions

This engagement is subject to the KPMG LLP Standard Terms and Conditions (Government) for Advisory and Tax Services subject to the following:

**Governing Law; Severability.** *All disputes between the parties (whether based in contract, tort, statute, rule, regulation or otherwise and whether pending in court or in an arbitral forum) shall be governed by and construed in accordance with the substantive and procedural laws of the State of Vermont, including without limitation its statutes of limitations, without regard to the conflict of laws provisions of New York or any other state or jurisdiction. In the event that any term or provision of the Engagement Letter or these terms shall be held to be invalid, void or unenforceable, then the remainder of the Engagement Letter and these terms shall not be affected, and each such term and provision shall be valid and enforceable to the fullest extent permitted by law.*

\* \* \* \* \*



If the terms of this engagement letter as set forth above are acceptable to you, please indicate your acceptance and authorization for KPMG to proceed with the related work by signing this letter in the appropriate space and returning a copy to me.

We look forward to working with Burlington Department of Public Works. If we can provide you with any additional information, please feel free to contact me at 978-360-5837.

Very truly yours,

KPMG LLP

Todd J. Durocher  
Principal

*Enclosure:*

KPMG LLP Standard Terms and Conditions (Government) for Advisory and Tax Services  
Livable Wage Certification KPMG

**ACCEPTED BY:**

City of Burlington Department of Public Works

*Authorized Signature*

Director - DPW

*Title*

## KPMG LLP

### Standard Terms and Conditions (Government) for Advisory and Tax Services

#### 1. Services; Client Responsibilities.

- (a) References herein to Client shall refer to the addressee of the Proposal or Engagement Letter to which these Standard Terms and Conditions are attached or incorporated (the "Engagement Letter") and references herein to KPMG shall refer to KPMG LLP, a Delaware registered limited liability partnership and the United States member firm of the KPMG network of independent firms (the "KPMG Network"). Client, its parent company and their affiliates, and their respective directors, officers, employees, and agents are collectively referred to herein as the "Client Parties." KPMG, the other member firms of the KPMG Network and firms and entities controlled by, or under common control with, one or more such member firms (collectively, the "Member Firms"), and their affiliates, and their respective partners, principals, employees, and agents are collectively referred to herein as the "KPMG Parties." Any work performed in connection with the engagement described in the Engagement Letter before its execution is also governed thereby and by these Standard Terms and Conditions.
- (b) It is understood and agreed that KPMG's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, Client. KPMG will not perform management functions or make management decisions for Client.
- (c) If KPMG audits the financial statements of Client or provides any other attestation services to Client, the rules of the American Institute of Certified Public Accountants ("AICPA") require Client to agree to the following provisions of this Paragraph 1(c). In connection with KPMG's provision of services under the Engagement Letter, Client agrees that Client, and not KPMG, shall perform the following functions: (i) assume all management responsibilities and perform all management functions; (ii) oversee such services, by designating an individual, preferably within senior management, who possesses suitable skill, knowledge and/or experience; (iii) evaluate the adequacy and results of such services; (iv) accept responsibility for the results of such services; and (v) establish and maintain internal controls over the processes with which such services are concerned, including performing ongoing evaluations of Client's internal control as part of its monitoring activities.
- (d) Subsequent to the completion of this engagement, KPMG will not update its Advice (as defined below) for changes or modifications to the law and regulations, or to the judicial and administrative interpretations thereof, or for subsequent events or transactions, unless Client separately engages KPMG to do so in writing after such changes or modifications, interpretations, events or transactions.

2. **Tax on Services.** All fees, charges and other amounts payable to KPMG under the Engagement Letter do not include any sales, use, excise, value added, income or other applicable taxes, tariffs or duties, payment of which shall be Client's sole responsibility, excluding any applicable taxes based on KPMG's net income or taxes arising from the employment or independent contractor relationship between KPMG and its personnel.

3. **Termination.** Either party may terminate the Engagement Letter at any time by giving written notice to the other party not less than 30 calendar days before the effective date of termination, provided that either party may terminate the Engagement Letter upon written notice

to the other party if laws, rules, regulations or professional standards applicable to a party preclude it from continuing to perform or receive the Services thereunder.

#### 4. Ownership and Use of Deliverables.

- (a) Upon full and final payment to KPMG under the Engagement Letter, KPMG assigns and grants to Client, title in the tangible items specified as deliverables or work product in the Engagement Letter (the "Deliverables") and any copyright interest in the Deliverables; provided that if and to the extent that any KPMG property is contained in any of the Deliverables ("KPMG Property"), KPMG hereby grants Client, under KPMG's intellectual property rights in such KPMG Property, a royalty-free, non-exclusive, non-transferable, perpetual license to use such KPMG Property solely in connection with Client's use of the Deliverables. KPMG acknowledges that it shall obtain no ownership right in Confidential Information (as defined below) of Client.
- (b) Should Client make a Deliverable bearing the "KPMG" name or logo available to a third party, it must be made available only in its entirety. KPMG may retain for its files copies of each of the Deliverables, subject to the provisions of Paragraph 11 below.
- (c) Client acknowledges and agrees that notwithstanding Paragraph 4(a), any advice, recommendations, information, Deliverables or other work product ("Advice") provided by KPMG in connection with the services under the Engagement Letter is intended for Client's sole benefit and KPMG does not authorize any party other than Client to benefit from or rely upon such Advice, or make any claims against KPMG relating thereto. Any such benefit or reliance by another party shall be at such party's sole risk. KPMG may, in its sole discretion mark such Advice to reflect the foregoing. Except for disclosures that are required by law or that are expressly permitted by this Agreement, Client will not disclose, or permit access to such Advice to any third party without KPMG's prior written consent.

5. **Warranties.** KPMG's services under the Engagement Letter are subject to and will be performed in accordance with AICPA and other professional standards applicable to the services provided by KPMG under the Engagement Letter and in accordance with the terms thereof. KPMG disclaims all other warranties, either express or implied.

6. **Limitation on Damages.** Except for the respective indemnification obligations of Client and KPMG set forth herein, the liability of the Client Parties and the KPMG Parties to one another, on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Engagement Letter shall be limited to the amount of fees paid or owing to KPMG under the Engagement Letter. In no event shall any of the Client Parties or any of the KPMG Parties be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). The provisions of this Paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, rule, regulation or tort (including but not limited to negligence) or otherwise.

**KPMG LLP**  
**Standard Terms and Conditions (Government) for Advisory and Tax Services**

**7. Infringement.**

- (a) KPMG hereby agrees to indemnify, hold harmless and defend the Client Parties from and against any and all claims, liabilities, losses, expenses (including reasonable attorneys' fees), fines, penalties, taxes or damages (collectively "Liabilities") asserted by a third party against any of the Client Parties to the extent such Liabilities result from the infringement by the Deliverables (including any KPMG Property contained therein) of such third party's patents issued in the United States as of the date the Deliverables are delivered to Client, trademarks or copyrights. Such KPMG obligations shall not apply to any infringement to the extent arising out of (i) use of the Deliverables other than in accordance with applicable documentation or instructions supplied by KPMG or other than for Client's internal business purposes; (ii) any alteration, modification or revision of the Deliverables not expressly agreed to in writing by KPMG; or (iii) the combination or operation of the Deliverables with materials not supplied or approved by KPMG.
- (b) In case any of the Deliverables (including any KPMG Property contained therein) or any portion thereof is held, or in KPMG's reasonable opinion is likely to be held, to constitute infringement, KPMG may, within a reasonable time, at its option either: (i) secure for Client the right to continue the use of such infringing item; or (ii) replace, at KPMG's sole expense, such item with a substantially equivalent non-infringing item or modify such item so that it becomes non-infringing. In the event KPMG is, in its reasonable discretion, unable to perform either of the options described in clauses (i) or (ii) above, Client shall return the allegedly infringing item to KPMG, and KPMG's sole liability shall be to refund to Client the amount paid to KPMG for such item; provided that the foregoing shall not be construed to limit KPMG's indemnification obligation set forth in Paragraph 7(a) above.
- (c) The provisions of this Paragraph 7 state KPMG's entire liability and Client's sole and exclusive remedy with respect to any infringement or claim of infringement.

**8. Reserved.**

**9. Cooperation; Use of Information.**

- (a) Client agrees to cooperate with KPMG in the performance of the services under the Engagement Letter and shall provide or arrange to provide KPMG with timely access to and use of the personnel, facilities, systems, equipment, data and information necessary for KPMG to perform the services under the Engagement Letter. The Engagement Letter may set forth additional details regarding KPMG's access to and use of personnel, facilities, equipment, data and information.
- (b) The Engagement Letter may set forth additional obligations of Client in connection with the services under the Engagement Letter necessary for KPMG to perform its obligations under the Engagement Letter. Client acknowledges that its failure to satisfy these obligations could adversely affect KPMG's ability to provide the services under the Engagement Letter.
- (c) Client acknowledges and agrees that KPMG will, in performing the services under the Engagement Letter, base its conclusions on the facts and assumptions that Client furnishes and that KPMG may use data, material, and other information furnished by or at the request or direction of Client without any independent investigation or

verification and that KPMG shall be entitled to rely upon the accuracy and completeness of such data, material and other information. Inaccuracy or incompleteness of such data, material and other information furnished to KPMG could have a material adverse effect on KPMG's conclusions.

- 10. **Independent Contractor.** It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is or shall be considered an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

**11. Confidentiality.**

- (a) "Confidential Information" means all documents, software, reports, data, records, forms and other materials obtained by one party (the "Receiving Party") from the other party (the "Disclosing Party") or at the request or direction of the Disclosing Party in the course of performing the services under the Engagement Letter: (i) that have been marked as confidential; (ii) whose confidential nature has been made known by the Disclosing Party to the Receiving Party; or (iii) that due to their character and nature, a reasonable person under like circumstances would treat as confidential. Notwithstanding the foregoing, Confidential Information does not include information which: (1) is already known to the Receiving Party at the time of disclosure by the Disclosing Party; (2) is or becomes publicly known through no wrongful act of the Receiving Party; (3) is independently developed by the Receiving Party without benefit of the Disclosing Party's Confidential Information; (4) is permitted to be disclosed by Paragraphs 18(a) or (b); or (5) is received by the Receiving Party from a third party without restriction and without a breach of an obligation of confidentiality.
- (b) The Receiving Party will deliver to the Disclosing Party or destroy all Confidential Information of the Disclosing Party and all copies thereof when the Disclosing Party requests the same, except for copies retained in work paper files or records, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Except as otherwise set forth in this Paragraph 11 or Paragraph 15 below, the Receiving Party shall not disclose to any person, firm or entity any Confidential Information of the Disclosing Party without the Disclosing Party's express, prior written permission; provided, however, that notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent that it is required or necessary to be disclosed pursuant to a statutory or regulatory provision or court or administrative order, or, subject to appropriate conditions of confidentiality, to fulfill professional obligations and standards (including quality and peer review) or to submit and process an insurance claim.
- (c) **Reserved.**
- (d) Each party shall exercise the same level of care to protect the other's information as it exercises to protect its own confidential information but in no event less than reasonable care, except to the extent that Client identifies applicable law, policies, or standards or KPMG identifies professional standards that impose a higher requirement.
- (e) If the Receiving Party receives a subpoena or other validly issued administrative, judicial, government or investigative regulatory

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- demand or request or other legal process (“Legal Demand”) requiring it to disclose the Disclosing Party’s Confidential Information, the Receiving Party shall, unless prohibited by law or such Legal Demand, provide prompt written notice to the Disclosing Party of such Legal Demand in order to permit it to seek a protective order. So long as the Receiving Party gives notice as provided herein, the Receiving Party shall be entitled to comply with such Legal Demand to the extent required by law, subject to any protective order or the like that may have been entered in the matter. In the event that KPMG is requested or authorized by Client, or is required by law, rule, regulation or Legal Demand in a proceeding or investigation to which KPMG is not a named party or respondent, to produce KPMG’s documents or personnel as witnesses or for interviews, or otherwise to make information relating to the services under the Engagement Letter available to a third party, or Client, Client shall reimburse KPMG for its professional time, at its then-current standard hourly rates, and expenses, including reasonable attorneys’ fees and expenses, incurred in responding to such requests, authorizations or requirements.
12. **Assignment.** Subject to Paragraph 15 below, neither party may assign, transfer or delegate any of its rights or obligations, claims or proceeds from claims arising under or relating to this Engagement Letter (including by operation of law, in which case the assigning party will, to the extent legally permissible, give as much advance written notice as is reasonably practicable thereof) without the prior written consent of the other party, such consent not to be unreasonably withheld. Any assignment, transfer or delegation in violation hereof shall be null and void.
13. **Governing Law; Severability.** All disputes between the parties (whether based in contract, tort, statute, rule, regulation or otherwise and whether pending in court or in an arbitral forum) shall be governed by and construed in accordance with the substantive and procedural laws of the State of \_\_\_\_\_, including without limitation its statutes of limitations, without regard to the conflict of laws provisions of New York or any other state or jurisdiction. In the event that any term or provision of the Engagement Letter or these terms shall be held to be invalid, void or unenforceable, then the remainder of the Engagement Letter and these terms shall not be affected, and each such term and provision shall be valid and enforceable to the fullest extent permitted by law.
14. **Alternative Dispute Resolution.**
- (a) Any dispute or claim between the parties shall be submitted first to non-binding mediation and, if mediation is not successful within 90 days after the issuance by one of the parties of a request for mediation then to a court of competent jurisdiction.
- (b) Mediation shall take place at a location to be designated by the parties using the Mediation Procedures of the IICPR, with the exception of paragraph 2 (Selecting the Mediator).
- (c) Damages that are inconsistent with any applicable agreement between the parties (including Paragraph 6 above), that are punitive in nature, or that are not measured by the prevailing party’s actual damages shall be unavailable in any forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall a mediator make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction.
- (d) Either party may seek to enforce any written agreement reached by the parties during mediation in any court of competent jurisdiction, provided that any party moving to enforce, confirm or vacate any such agreement or award, as the case may be, will file such motion under seal unless prohibited under applicable court rules.
- (e) Notwithstanding the agreement to such procedures, either party may seek equitable relief to enforce its rights in any court of competent jurisdiction. Nothing herein shall preclude KPMG from filing a timely formal claim in accordance with applicable state law provided, however, that KPMG shall, if permitted, seek a stay of said claim during the pendency of any mediation.
15. **Use of Member Firms and Third Parties.**
- (a) Client acknowledges and agrees that the services under the Engagement Letter, including any applicable tax advice, may be performed by a Member Firm located outside of the United States. Client understands that each Member Firm is a separate, distinct and independent legal entity and is not a partner, principal, agent or affiliate of KPMG and KPMG is not a partner, principal, agent or affiliate of any other Member Firm.
- (b) Client further acknowledges and agrees that in connection with the performance of services under the Engagement Letter, KPMG and Member Firms, in their discretion or at Client’s direction, may utilize the services of third parties (“Vendors”) within and outside of the United States to complete the services under the Engagement Letter.
- (c) Client further acknowledges and agrees that KPMG Parties may have access to Confidential Information from offshore locations, and that KPMG uses Vendors within and outside of the United States to provide at KPMG’s direction administrative, clerical or analytical services to KPMG. These Vendors may in the performance of such services have access to Client’s Confidential Information. KPMG represents to Client that with respect to each Member Firm and Vendor, KPMG has technical, legal and/or other safeguards, measures and controls in place to protect Confidential Information of Client from unauthorized disclosure or use. KPMG shall be responsible to Client for their failure to comply.
- (d) Accordingly, Client’s agreement above extends to disclosure, ability to access, and use of its Confidential Information by the parties and Vendors for the purposes set forth in Paragraph 11 and this Paragraph 15.
- (e) Any services performed by a Member Firm or Vendor shall be performed in accordance with the terms of the Agreement and these Standard Terms and Conditions (Government), including Paragraph 11 (Confidentiality), but KPMG shall remain responsible to Client for the performance of such services. Client agrees that any claim relating to the services under the Agreement may only be made against KPMG and not any other Member Firm or Vendor referred to above.
16. **Miscellaneous.**
- (a) **Reserved.**
- (b) **Electronic Communications.** KPMG and Client may communicate with one another by electronic mail or otherwise transmit documents

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in electronic form during the course of this engagement. Each party accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). Client agrees that the final hardcopy or electronic version of a document, including a Deliverable, or other written communication that KPMG transmits to Client shall supersede any previous versions transmitted by KPMG to Client.

- (c) **California Accountancy Act.** For engagements where services will be provided by KPMG through offices located in California, Client acknowledges that certain of KPMG's personnel who may be considered "owners" under the California Accountancy Act and implementing regulations (California Business and Professions Code section 5079(a); 16 Cal. Code Regs. sections 51 and 51.1) and who may provide services in connection with this engagement, may not be licensed as certified public accountants under the laws of any of the various states.
- (d) **Volume Rebates.** Where KPMG is reimbursed for expenses, it is KPMG's policy to bill clients the amount incurred at the time the good or service is purchased. If KPMG subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, KPMG does not credit such payment to Client. Instead, KPMG applies such payments to reduce its overhead costs, which costs are taken into account in determining KPMG's standard billing rates and certain transaction charges that may be charged to clients.
- (e) **Use of Names and Logos.** Except as permitted by law or as set forth in the Engagement Letter or this Paragraph 16(e), neither party shall acquire hereunder any right to use the name or logo of the other party or any part thereof, and any such use shall require the express written consent of the owner party. Client agrees that KPMG may list Client as a customer in KPMG's internal and external marketing materials, including KPMG websites and social media, indicating the general services rendered. In addition, Client gives KPMG the right to use Client's logo on the Deliverables and documents prepared for Client internally (e.g., internal presentations, etc.) or for internal KPMG presentations and intranet sites.
- (f) **Export Control.** KPMG and Client acknowledge and agree that each shall comply with all applicable United States export control laws and regulations in the performance of each party's respective activities under the Engagement Letter. Client shall not provide KPMG, or grant KPMG access to, (a) information (including technical data or technology), verbally, electronically, or in hardcopy, (b) software or (c) hardware, that is controlled for export by the United States government under the Arms Export Control Act of 1976, Export Administration Act of 1979, the International Traffic in Arms Regulations ("ITAR"), Export Administration Regulations ("EAR"), Department of Energy Part 810 Regulations or Nuclear Regulatory Commission Part 110 Regulations, except information, software or hardware that is classified as EAR99 under the EAR.
- (g) **Active Spreadsheets and Electronic Files.** KPMG may use models, electronic files and spreadsheets with embedded macros created by KPMG to assist KPMG in providing the services under the Engagement Letter. If Client requests a working copy of any such model, electronic file or spreadsheet, KPMG may, at its discretion, make such item available to Client for its internal use only on an as-is basis and such item shall be considered a Deliverable subject to

Paragraph 4 above; provided that Client is responsible for obtaining the right to use any third party products necessary to use or operate such item.

- (h) **Non-Solicitation.** During the term of the Engagement Letter and for one year thereafter, neither party shall solicit for hire as an employee, consultant or otherwise any of the other party's personnel who have had direct involvement with the services under the Engagement Letter, without such other party's express written consent. This prohibition shall not apply to any offers of employment which result from a general solicitation for employment, including without limitation, through the Internet, newspapers, magazines and radio.
17. **Entire Agreement.** The Engagement Letter and these Standard Terms and Conditions, and any exhibits, attachments, addenda and appendices hereto and thereto, and amendments to any of the foregoing that are agreed in writing between the parties, shall constitute the final, complete and exclusive agreement between the parties with respect to the subject matter of the foregoing, and supersede all other previous and contemporaneous oral and written representations, understandings or agreements relating to that subject matter.
18. **Additional Terms for Engagements Involving Tax Services.**
- (a) Notwithstanding anything to the contrary set forth herein, no provision in the Engagement Letter or these Standard Terms and Conditions is or is intended to be construed as a condition of confidentiality within the scope of the Internal Revenue Code of 1986 (the "IRC") section 6011 as implemented through Treasury Regulation 1.6011-4(b)(iii)(ii) (without regard to references to payment or receipt of a minimum fee) or under any similar or analogous provisions of the laws of a state or other jurisdiction. In particular, Client, its directors, officers, employees and agents may disclose to any and all persons, without limitation of any kind, tax information KPMG provides to Client, including all materials such as tax opinions, memoranda, or other written tax advice that describes or otherwise relates to, either or both of the tax treatment and tax structure of any transaction on which KPMG's services are provided. Client agrees to use commercially reasonable efforts to inform KPMG of any conditions of confidentiality imposed by third party advisors with respect to any transaction on which KPMG's services are requested. Such notification must occur prior to KPMG providing any advice with respect to the transaction.
  - (b) Treasury regulations under IRC section 6011 require taxpayers to disclose to the IRS their participation in reportable transactions and IRC section 6707A imposes strict penalties for noncompliance with IRC section 6011. IRC section 6111 and the laws of various states require a material advisor with respect to a reportable transaction to make a return containing specified information concerning the transaction to the IRS or a designated state tax authority by a prescribed date, and IRC section 6707 imposes penalties for noncompliance with IRC section 6111. IRC section 6112 and the laws of various states require the material advisor to maintain, and make available to the IRS or designated state tax authority upon request, a list containing prescribed information with respect to persons advised and other information with respect to the reportable transaction, and IRC section 6708 imposes penalties for noncompliance with IRC section 6112. Client agrees to use commercially reasonable efforts to inform KPMG if Client is required to disclose any transaction covered by the Engagement

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Letter as a reportable transaction to the IRS or to any state or other jurisdiction adopting similar or analogous provisions to IRC section 6011. KPMG will use commercially reasonable efforts to inform Client if KPMG provides Client's identifying information to the IRS under IRC section 6111 or 6112, or to any state tax authority or other jurisdiction adopting similar or analogous provisions thereto.

- (c) Unless expressly provided for, KPMG's services do not include representing Client in the event of a challenge by the IRS or other tax or revenue authorities.
- (d) In rendering tax advice, KPMG may consider, for example, the applicable provisions of the IRC, and the Employee Retirement Income Security Act of 1974, each as amended, and the relevant state, local and foreign statutes, the regulations thereunder, income tax treaties, and judicial and administrative interpretations, thereof. These authorities are subject to change, retroactively or prospectively, and any such changes could affect the validity of KPMG's advice

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

I, Todd Durocher, on behalf of KPMG LLP ("the Contractor") in connection with a contract for Advisory 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

(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 reasonably 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: 12/19/2017 By: Todd Durocher  
Contractor

Subscribed and sworn to before me: Todd Durocher

Date: 12/19/2017 Cindy L Hollerich  
Notary

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Cindy L. Hollerich, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires Nov. 13, 2020  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

