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**COMMUNITY & ECONOMIC DEVELOPMENT OFFICE**

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January 31, 2014

To: Board of Finance

From: Peter Owens, CEDO Director

Re: Amended contract for Downtown TIF services

In conjunction with our discussions on downtown TIF, we are seeking Board of Finance approval to amend a City contract with consultants White + Burke with added scope of work and maximum limiting amount. The work relates to assisting the City with a substantial change and first phase project amendments to our Downtown TIF Plan for submission to the Vermont Economic Progress Council (VEPC). Please find attached materials:

- Existing Contract dated May 11, 2010
- New Scope of Work and Amount

Thank you for you consideration.

**Amendment to SCOPE OF WORK**  
**White + Burke Real Estate Investment Advisors, Inc.**  
**Downtown Tax Increment Financing District**

This amends the Scope of Work within the Downtown TIF District contract between the City of Burlington and White + Burke Real Estate investment Advisors, Inc. signed in May 11<sup>th</sup> 2010.

**BASIC SCOPE OF SERVICES:**

The City of Burlington is seeking to amend its Downtown Tax Increment Financing District to allow:

1. A "Substantial Change" submission to the TIF Plan
2. A "First Phase" project application

White + Burke (or a sub-consultant managed by White + Burke) will coordinate, write, submit and otherwise assist the City's application for Downtown TIF amendment to the Vermont Economic Progress Council (VEPC).

The contract for these services will not exceed \$15,000. The Maximum Limiting Amount will be adjusted accordingly.

CONTRACT for PROFESSIONAL SERVICES

between the

CITY OF BURLINGTON

and

White + Burke Real Estate Investment Advisors, Inc.

This Agreement to provide consulting services (hereinafter call "Agreement") is made and entered into on the \_\_ day of \_\_\_\_, 2010 by and between the City of Burlington, Vermont, acting through its Community and Economic Development office (hereinafter call "the City"), and White + Burke Real Estate Investment Advisors, Inc. (hereinafter call "the consultant"), pursuant to the following terms and conditions:

WHEREAS, Tax Increment Financing (hereinafter "TIF") districts are state-governed municipal financing tools that help pay for public infrastructure improvements required to stimulate development or redevelopment within an area defined by a municipality, with the goals of providing employment opportunities, improving and broadening the tax base, and enhancing the general economic vitality of a municipality, region, or the state; and

WHEREAS the City intends to apply to the Vermont Economic Progress Council (hereinafter "VEPC") to create a new TIF district in parts of the city's state-designated Downtown Development District, and the City Council has authorized the City to submit a TIF District application, and the City has submitted a Letter of Intent to VEPC; and

WHEREAS the City is now seeking a consultant to assemble the actual TIF application in November 2009, the City conducted a Request for Proposals (RFP) process for professional consulting services to prepare an application to the Vermont Economic Progress Council to establish a new Tax Increment Financing district in the city; and

WHEREAS the City received three proposals, and subsequently selected Consultant, to provide services to the City's team working to establish the district; and

NOW THEREFORE, the City and the Consultant hereby agree to the following:

1. The period of performance under this Agreement shall be from March 1, 2010 until July 1, 2010. This Agreement may be extended by mutual written agreement of the parties. Draft deliverables are due under this Agreement by July 1, 2010 (see Section 6). Finalization of the draft deliverables, including some required application materials that are contingent upon City approval and process, in addition to actual production of the TIF applications, may continue beyond the July 1, 2010 deliverable due date and shall require amendment of this agreement.

This agreement includes consultant attendance at and participation in working sessions with City and CEDO staff as required to prepare the Deliverables, and one coordination meeting with VEPC. Attendance at VEPC meetings to present the application, or at City meetings as requested by the City, is not included in this agreement, and will require amendment of this agreement or a separate agreement.

2. This Agreement represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall be null and void and have no effect.
3. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont.
4. No changes, modifications, or amendments in terms and conditions of this Agreement shall be effective unless reduced to writing, numbered and signed by the duly authorized representatives of the City and the Consultant.
5. The Scope of Work under this Agreement shall include, but is not limited to:
  - A. Preparing components of the TIF application, consistent with 24 V.S.A. §§1981-1900 and VEPC guidelines and procedures including drafting the materials required for:
    - (i) A TIF District Application
    - (ii) A TIF District Plan
    - (iii) A TIF District Financing Application
  - B. Attendance at public meetings required by the TIF application process, as well as VEPC meetings at which the application is being considered, shall be covered under a separate Agreement
  - C. Working with the City's Director of Community and Economic Development Office (hereinafter "CEDO") CEDO staff and other members of the City's team working to establish the TIF District.
  - D. Providing additional services (which may include approved sub-contracted services where deemed appropriate) as needed for the completion of the TIF application draft Deliverables as outlined in A above; any such expenses shall be included in the Consultant's not-to-exceed fee for this Agreement.
6. Deliverables
  - A. Deliverables will include the following aspects of the VEPC TIF application:
    - (i) TIF District Application materials in draft form, including all application forms, including application checklist, "but for" statement, nexus and proportionality analysis, application approval criteria, and authorization and certification, and excluding those materials such as Clerk's certification that must be obtained or produced by City and CEDO staff.
    - (ii) TIF District Plan in draft form
    - (iii) TIF District Financing Plan in draft form
  - B. Deliverables will be due by July 1, 2010, which date may be extended by mutual agreement of the parties in writing.

- C. The Consultant will use Microsoft-based software to produce all deliverables.
  - D. Materials prepared for the City by the Consultant under this Agreement shall be designated "Project Documents" for purposes of this Agreement. The City shall have the right, if the Consultant has been fully compensated for the work, to retain, distributed and use the Project Documents. This City, and not the Consultant, shall have and retain all ownership rights and control the Project Documents use. The Consultant will not use the Project Documents for any purpose not relating to the Project without the City's prior written consent.
  - E. The Consultant shall retain all records pertaining to this agreement for a period of three (3) years after the final payment or if an audit, litigation or any other action or matter involving such records is started before the end of the three-year period the records shall be kept until the full and complete resolution of said audit, litigation or action.
7. This project is partially funded with public funds and requires compliance with applicable Federal, state and local rules and regulations including Burlington's Livable Wage Ordinance which requires payment of an annually adjusted livable wage to employees on the funded project.

Consultant understands that the requirements of the Americans with Disabilities Act ("ADA") are evolving and will be subject to various, potentially contradictory interpretations and applications. Consultant will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. Consultant cannot and does not warrant or guarantee that the City's project will comply with all ADA requirements or ADA interpretations.

8. Consultant agrees to carry the following insurance during the term of this Agreement:
- Workmen's Compensation and Employer's Liability Insurance in compliance with statutory limits.
  - Comprehensive General Liability Insurance including Products Completed, Contractual, Property, and Personal Injury coverage with combined single limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
  - Professional Liability Insurance with a limit of \$1,000,000 per claim and in the aggregate.
  - Automobile Liability Insurance including non-owned and hire automobiles with a combined single limit of \$1,000,000 per occurrence.
9. Terms of Compensation and Reimbursement
- A. General. The City agrees to pay the Consultant and the Consultant agrees to accept as full compensation for performance of all services and expenses encompassed under this Agreement, payment at the rates specified in the Billing

Rates within Attachment A. Reimbursement for expenses not specified in Attachment A shall require the prior written consent of the City.

- B. Maximum Limiting Amount (MLA). The total amount to be paid to the Consultant for all services shall not exceed a maximum limiting amount of \$16,852.48 for all services. Any work which will result in exceeding the MLA shall be negotiated and mutually agreed upon by both parties in writing.

10. Payment Procedures

Invoices will be monthly. Invoices for services including reimbursable expenses shall be submitted to Kirsten Merriman Shapiro, Municipal Project Manager, CEDO, Room 12 – CITY Hall 149 Church Street, Burlington, VT 05401. Invoices shall be payable within 30 days after the invoice date. A service charge of 1.5% (or the legal rate) per month will be applied to the unpaid balance after 60 days. The City agrees to pay all costs of collection, including reasonable attorney's fees. Invoice payments must be kept current for services to continue. If the City fails to pay any invoice due to Consultant within 45 days of the date of invoice, Consultant may, without waiving any other claim of right against City, suspend services under this Agreement until Consultant has been paid in full all amounts due Consultant and/or any of its Consultants and Subcontractors. Sealed plans, final documents, reports, and attendance at meetings/hearing will not be provided unless payment for services is current.

11. Consultant shall neither assign this Agreement nor sublet any of the duties to be performed hereunder without the prior consent of the City.
12. The City and Consultant shall at all times indemnify and save harmless each other and their officers, and employees on account of any claims, damages, losses, litigation, expenses, counsel fees, and compensation arising out of any claims, damages, personal injuries and/or property losses sustained by the person or entity, to the extent caused by the negligent acts, errors or omissions of the indemnifying party, its employees, or subcontractors in connection with the Project, and/or under this Agreement.
13. Consultant shall not be responsible for failure to perform or for delays in the performance of services which arise out of causes beyond the control and/or without the fault or negligence of Consultant.
14. Consultant shall be entitled to rely on the accuracy and completeness of data, reports, surveys, requirements, and other information required to be provided by the City and other third parties under this Agreement.
15. In the performance or furnishing of professional services hereunder, Consultant, and those it is responsible for, shall exercise the degree of skill and care customarily accepted as good professional practices and procedures by members of the same

profession currently practicing under similar conditions in the same locality (“Standard of Care”).

Consistent with this Standard of Care, the services shall conform to applicable laws, codes, ordinances, and the regulations of any governmental agency having jurisdiction over the project, at the time services are rendered. Consultant shall perform its services as expeditiously as is consistent with the Standard of Care and with the orderly progress of the Work.

16. Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant having to certify, guarantee or warrant the existence of conditions whose existence Consultant cannot ascertain. Any certification provided by Consultant shall be so provided based on Consultant’s knowledge, information, and belief subject to the preceding sentence, and shall be given in Consultant’s professional opinion consistent with the Standard of Care. Consultant shall be compensated for any such work necessary to verify project compliance with regulatory standards for purposes of such certification.
17. Termination of the Agreement
  - A. Given the nature of this application process, the City reserves the right to withdraw from the application process at any time and may upon written notice thereof to the Consultant terminate the Agreement immediately upon said notice. Additionally, for any reason other than the City’s withdrawal from the application process, with the City or the Consultant may terminate this Agreement for any reason, by giving written notice at least thirty (30) days in advance.
  - B. Failure of the Consultant to comply with the terms of this Agreement shall be deemed a material breach of this Contract and may constitute termination upon three days’ written notice to Consultant’s project manager.
  - C. Failure of the City to pay the Consultant as agreed upon and in a timely manner shall be deemed a material breach of this Agreement and may constitute termination upon three days’ written notice to the City’s project manager.

Upon termination of Consultant, City shall compensate Consultant for all monies owed for services performed up to the receipt of written notice of termination.

18. All questions in dispute under this Agreement shall be submitted to non-binding mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within ten (10) days after service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting. Should the parties themselves be unable to agree on a resolution of dispute, then the parties shall proceed with mediation in accordance with the mediation rules of the American Arbitration Association. The cost of the mediation shall be borne

equally by both parties. This process shall be considered as a condition precedent to moving to a more formal or judicial process.

19. Consultant's commitments as set forth in this Agreement are based on the expectation that all of the services described in the agreement will be provided. In the event the City later elects to reduce Consultant's scope of services, the City hereby agrees to release, hold harmless, defend and indemnify Consultant from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.
20. White + Burke Real Estate Investment Advisors, Inc. shall not be responsible for failure to perform or for delays in the performance of services which arise out of causes beyond the control and/or without the fault or negligence of White + Burke Real Estate Investment Advisors, Inc.

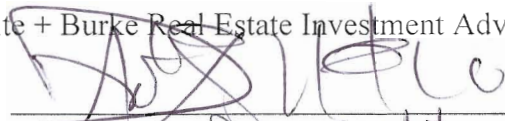
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

White + Burke Real Estate Investment Advisors, Inc.

By:

Title:

Date:

  
\_\_\_\_\_  
David A. White  
President  
\_\_\_\_\_  
5/10/10  
\_\_\_\_\_

City of Burlington, Vermont

By:

Title:

Date:

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Larry Kupferman  
\_\_\_\_\_  
CEDO Director  
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