



MEMORANDUM

January 28, 2014

TO: Burlington City Council

FROM: Megan Moir, Steve Roy, Laurie Adams

RE: Request for Approval to Execute Contract Related to Hydrologic/Hydraulic Model of the Main Plant Collection System

Project Need:

As you are all well aware, Burlington's drainage infrastructure has been challenged in the recent years due to increasingly intense and more frequently occurring rain fall events. Because the system is a network, with potential downstream impacts whenever we implement a localized improvement, it is critical that we have a comprehensive understanding of our collection system and have a tool with which we can evaluate different possible scenarios in order find the most cost effective solution.

Hydrologic and Hydraulic (H/H) Modeling software enables DPW to create a representation of our collection system (the inlets, pipes, manholes and the wastewater treatment plan) as well as the runoff generating mechanisms of our landscape (impervious surface). We can then run simulations of different rain fall events and confirm the cause of observed drainage issues, whether it is an inlet problem, a local pipe problem or a downstream pipe problem. Simulations of proposed solutions to various drainage challenges can also be run so that DPW can evaluate the various benefits and disadvantages of a proposed project. Additionally, we can begin to examine possibilities for stormwater reductions to the combined sewer system which may have both local and downstream (at the Wastewater Treatment Plant) benefits.

A DOS based model was originally developed for the Main Plant Collection System in the late 1980s. While as much of the previous modeling effort will be used as possible, the model needs to be thoroughly updated to include the recent infrastructure mapping work that was done in 2011-2013 and also brought into a modern program (PCSWMM) which has more functionality and is more seamlessly integrated with our GIS based mapping. Lastly, the landscape inputs to the model (impervious surface etc.) must also be updated to reflect the changes that have happened in the last 30 years.

While it is our intention to ultimately complete H/H models for the entire city, we have chosen the Main Plant Collection System as our starting place as it represents the largest and oldest portion of the City (53% of total city sewered area) and has the highest proportion of combined sewers (60% of total miles of pipe, 85% of watershed area). It is also the area of the City which has, in recent years, had some of the highest prevalence of basement sewer backups and street flooding.

Project Details

Because we have much of the necessary data available in our GIS database, much of the early work effort will be on QA/QCing this data for elevation accuracy and on coding the more

complex structures in our system. A great deal of the work will be focused on delineating which areas of the landscape drain to which portions of the system and on monitoring the existing flows in the system over a number of storm events so that the model can be calibrated. Model calibration ensures that the model is as close an approximation to the "real world" as data will allow.

Pending approval by the Board of Finance and City Council, the project will begin in earnest in March and is expected to be complete by October 15, 2014.

The substantive elements of the draft contract are attached for your approval. This contract has been developed with the assistance of the City Attorney and we will obtain final review and approval of the contract as to the form and substance prior to execution.

Procurement Details:

A request for proposals was issued August 16, 2013 with a September 6th deadline. Three (3) proposals were received:

Stantec Consulting Services	\$132,500
Stone Environmental Inc.	\$138,500
Weston & Sampson	\$172,470

Stantec Consulting Services' proposal ranked the highest, both on the quality of the technical proposal as well as the on the amount of the cost estimate.

Project Cost:

The contract has been prepared with a not to exceed (NTE) cost of \$138,850. This includes the \$132,500 cost of the Base Scope which involves the tasks that **must** be done, and a **minimum** of 3 months of flow monitoring. However, because the calibration effort is dependent on having "captured" a sufficient range of rainfall events during monitoring, there is a possibility that we will need to increase the length of monitoring. As such, the contract also includes an "elective" additional 2 months of monitoring at \$6,350 which may be activated by the City if recommended by the consultant.

Funding:

The project will span over two fiscal years, with an estimated \$90,000 of expenses prior to the end of FY 14 and the remaining \$42,500 - \$48,850 occurring in FY 15. Because this model is the foundation of improved decision making for necessary and important capital improvements to our collection system, Mayor Weinberger has supported DPW's request for a contribution of \$65,000 from the Capital Improvement Program fund towards the FY 14 cost of the contract. The remainder of the contract for FY 14 and for FY 15 will be funded by the Stormwater Revenue Fund (245), out of the Professional and Contractual Services G/L line 245-19-000.6500_118. This line item has sufficient funds for FY 14, and this contract obligation will be programmed for FY 15.

FY 14 Capital Improvement Program	\$ 65,000.00
FY 14 Stormwater Fund (245-19-000.6500_118)	\$ 25,000.00
FY 15 Stormwater Fund (245-19-000.6500_118)	\$ 48,850.00
Total	\$ 138,850.00

Action Needed:

We respectfully request City Council support for the attached Council resolution at the February 10, 2014 meeting authorizing DPW Director Chapin Spencer to execute the contract pending final review and approval by the City Attorney's office.

If you have any questions or concerns, please contact Steve Roy at sroy@burlingtonvt.gov.

**AGREEMENT
FOR HYDROLOGIC/HYDRAULIC MODELING SERVICES
BY AND BETWEEN
THE CITY OF BURLINGTON, VERMONT
AND
STANTEC CONSULTING SERVICES, INC.**

THIS AGREEMENT is made this _____ day of _____, 2014, by and between the City of Burlington, Vermont, acting herein by and through its Department of Public Works, hereinafter called the "CITY," and Stantec Consulting Services, Inc. with offices at 55 Green Mountain Drive, South Burlington, hereinafter called the "CONTRACTOR."

WHEREAS, the CITY desires to update the Hydrologic and Hydraulic(H/H) Model for the Main Plant collection system so that it can better evaluate capacity and surcharge issues and opportunities for stormwater management in the combined sewer system ; and

WHEREAS, the CITY published a request for proposals for consultant assistance in developing and calibrating a H/H model for the Main Plant Collection System on August 16, 2013, hereinafter known as THE PROJECT; and

WHEREAS the CONTRACTOR has filed a timely response to the RFP that the City issued for THE PROJECT and was selected by the selection committee as the contractor most capable of providing consultant services for the THE PROJECT and is ready, willing and able to perform the required services in the time required; and

WHEREAS, the City desires to contract with Contractor for these services;

NOW, THEREFORE, in consideration of the promises and covenants herein set forth, it is agreed by the parties hereto as follows:

1. Services and Scope of Work: CITY agrees to engage CONTRACTOR for the services and the CONTRACTOR accepts and agrees to such engagement for the following professional services:
 - a. Base Scope of Services (see Attachment A for detailed scope of services):
 - i. Geo-database Preparation
 - ii. Initial Model Build (Un-Calibrated)
 - iii. Flow Monitoring Program
 - iv. Baseline Model Calibration and Validation Technical Memo
 - b. Optional Scope of Services: depending on the availability of funding and the need based on the outcome of the base scope of services work, all or portions of the optional scope of services (Attachment B) may be activated through amendment of this AGREEMENT.

2. Payment: In consideration of the services to be performed by CONTRACTOR, CITY agrees to pay CONTRACTOR, in accordance with the cost break out detailed in Attachment D, a sum Not To Exceed \$139,000 for performance of the base scope of services outlined in Attachment A.
- a. The Not To Exceed total includes the cost of elective base scope tasks (additional flow monitoring months) which may be pursued with the written approval of the CITY in the case that additional flow monitoring is necessary to capture the full range of storm events. If these additional flow monitoring months are not necessary, the parties agree that CITY shall not be billed by the CONTRACTOR for this elective item.
 - b. In the event that additional funds become available within the overall term of this AGREEMENT, the Parties agree that the AGREEMENT may be amended to authorize a revised Total Not to Exceed Contract amount to complete additional tasks from the Optional Scope in Attachment B.
 - c. Payment Terms
 - i. Services will be invoiced on or about the first of each month
 - ii. Payment will be made within 30 days;
 - iii. The task for which hours are being billed shall be included in the invoice;
 - iv. Reimbursable expenses will be billed at cost. Reimbursable expenses include large format printing, photocopying, and mileage;
3. Agreement Term: The period of CONTRACTORs performance shall begin upon this 10th day of February, 2014 and end on March 31, 2014.
- a. The CONTRACTOR agrees to generally comply with the schedule provided in Attachment C.
 - b. The CONTRACTOR agrees to provide the services and deliverables described in the Base Scope of Services (Attachment A) in their entirety by October 15, 2014.
 - c. Services described in the Optional Scope of Services may be completed prior to the expiration of this AGREEMENT according to the terms and deliverable due dates of any Amendment authorized by the CITY.
4. Attachments: The CONTRACTOR accepts and agrees to perform work in compliance with the provisions in the following attachments, all of which are incorporated herein and made part of this AGREEMENT:
- Attachment A – Base Scope of Work to be Performed
 - Attachment B – Optional Scope of Work
 - Attachment C - Schedule
 - Attachment D – Cost Table
 - Attachment E– Additional Contract Provisions
 - Attachment F – City’s Livable Wage Ordinance, Ch 21. Article VI

Attachment G – City's Outsourcing Ordinance, Ch. 21, Article VII
Attachment H – City's Union Deterrence, Ch. 21, Article VIII

In the event of any conflict between an attachment and the AGREEMENT, the AGREEMENT will be controlling.

5. Entire Agreement and Amendments:

The parties acknowledge that this AGREEMENT is the entire agreement between the parties and that there are no representations, inducements, arrangements, promises, or agreements outstanding between them, either oral or in writing, other than those. No provision of this AGREEMENT shall be changed or modified except by a written instrument executed by both parties hereto.

6. Waiver

No waiver by City of any breach of this AGREEMENT by the CONTRACTOR shall constitute a waiver of any subsequent breach by the CONTRACTOR, and no delay in enforcement of any breach shall be deemed a waiver of that breach.

7. Severability

If any provision of this AGREEMENT is rendered invalid or unenforceable by the decision of any court of competent jurisdiction, that provision shall be severed, and all other provisions of this Agreement shall remain in full force and effect.

10. Binding Nature:

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their respective successors or heirs, and permitted 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.

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

BURLINGTON

CONTRACTOR

Signature: _____

Signature: _____

Name: Chapin Spencer

Name:

Title: Director of Public Works

Title:

Date: _____, 2013

Date: _____, 2014

Attachment A

Base Scope of Services

PROJECT DELIVERABLES

- A. Initial Project Geodatabase and Hydraulic Model (modeling files and description)
- B. Phase 1 Monitoring report
- C. Initial Model Calibration and Validation Technical Memo
- D. Final Model Report, Calibrated/Validated Model, Final Geodatabases (**Final Deliverable**)

Task 1: Geodatabase and Initial Hydraulic Model

- A. Source Data Collection and Review
 - 1. Identification and Communication of Data Needs
 - 2. Manual Takeoff/Input of Sewer Inverts (QA/QC of City Supplied Data)
 - 3. Set up GIS Base Files (**PCSWMM** Format)
 - 4. Research and Define Sewer Separation Updates
- B. Data Validation, Connectivity Assessment and Gap Analysis
 - 1. Undertake Data Validation
 - 2. Review System Connectivity and Profiles
 - 3. ID Gaps for further Investigation
- C. Special Structure Characterization and Model Representation
 - 1. Code in Pump/Lift Stations
 - 2. Identify and Code Hydraulically Significant Structures
 - 3. Identify Survey Needs for Special Structures and Code in Model (Surveys by City)
- D. QA/QC

Task 2: Initial Model Build (Un-calibrated)

- A. Catchment Delineation and Characterization
 - 1. Delineate Catchments & Associate to Collection System
 - 2. Establish Effective Areas & Hydrology Parameters
 - 3. DWF - Establish Populations and ICI Areas & Rates
- B. Initial Model Build (un-calibrated model)
 - 1. Import observed flow and rainfall data into model
 - 2. Import Network Data and Catchments
 - 3. Review RDII Parameters and Assign to Un-monitored Catchments
- C. QA/QC

Task 3: Flow Monitoring Program

- A. Phase 1 Monitoring Program (5 sites 3 months)

1. Prepare and Install Flow Monitoring Equipment
 2. Initial Level/Velocity Checks and Site Quality Assurance
 3. In-field Data Checks as necessary (by City staff)
 4. Data Management and QA/QC (bi-weekly checks and Monthly Data Reports)
 5. Equipment Removal (to be confirmed or program extended)
- B. *ELECTIVE Additional Phase 1 Monitoring (5 sites for additional 1-2 months) [this task to activated at the written request by CITY if necessary to acquire more storm events]*

Task 4: Baseline Model Calibration and Validation

- A. Review of Monitoring/Rainfall Data and Selection of Calibration Events
 1. Review historical data for calibration/validation events
 2. Review 2014 Monitoring and Data for Calibration/Validation Events
 3. Prepare data for comparison with model
- B. Model Calibration and Validation
 1. Run model and validate responses
 2. Review DWF and Adjust as Needed
 3. Review RDII and Adjust as Needed
 4. Validate model with operational data at WWTP
- C. Collection System Model Technical Memos and Report
- D. QA/QC

Attachment B
Optional Scope of Services

Optional DELIVERABLES:

- A. Phase 2 Monitoring Report
- B. Dual-Drainage Model Build and Validation

Optional: Phase 2 Monitoring Program for Inflow/Infiltration evaluation (5 sites - 2 or 3 months)

- 1. In-field Data Checks as necessary (by City staff)
- 2. Data Management and QA/QC (bi-weekly checks and Monthly Data Reports)
- 3. Equipment Removal (to be confirmed or program extended)

Optional: Development of Dual Drainage Model (Combined Area)

- A. Phase 1 - 1D Surface model development (Combined Area)
 - 1. Collect Inventory of CBs (City Staff)
 - 2. Develop DEM and delineate overland catchments, ponding areas and spill points
 - 3. Field Surveys to validate critical locations
 - 4. Coding of surface model in PC-SWMM
 - 5. Model Test Runs and Validation
- B. Phase 2 - 2D surface model for select combined areas
 - 1. Delineate critical areas for 2D model development
 - 2. Coding of 2D surface model in PC-SWMM
 - 3. Model Test Runs and Validation
- C. Dual Drainage Model Report
- D. QA/QC

City of Burlington Vermont
Combined Sewer Hyrdologic and Hydraulic ModelSubmission
Meeting

Submission

300-0003

ATTACHMENT D

Client
Project Name

TABLE 1: PROJECT LEVEL OF EFFORT

	Myers J Project Manager	D'Alessio Sr. Eng	Comau Advisor	Barton Advisor	Telmoxe Int. Eng	Junor Engineer	Technical Support	oo blank	Hours	Stantec Fees
Hourly Rates	\$130.00	\$196.00	\$224.00	\$196.00	\$134.00	\$107.00	\$74.00	\$0.00		
PROJECT MANAGEMENT & MEETINGS										
Project Management/Administration	40.0	8.0							48.0	\$6,768.00
Meetings										
Meeting 1 - Project Initiation Meeting	4.0	16.0							20.0	\$3,656.00
Meeting 2 - Hydraulic Model and Proposed Modeling Approach	4.0	3.0			3.0				10.0	\$1,510.00
Meeting 3 - Phase 1 Monitoring Review and Initial Model Build	4.0	4.0			4.0				12.0	\$1,840.00
Meeting 4 - Initial Model Calibration and Validation	4.0	4.0			4.0				12.0	\$1,840.00
Meeting 5 - Dual-drainage model Build (optional)	4.0	4.0			4.0				12.0	\$1,840.00
Meeting 6 - Draft Final Report Review	4.0	4.0			4.0				12.0	\$1,840.00
Sub-Totals	64.0	43.0	0.0	0.0	19.0	0.0	0.0	0.0	126.0	\$19,294.00
MODEL DEVELOPMENT AND MONITORING										
Task 1: Geodatabase and Initial Hydraulic Model										
Source Data Collection and Review										
Identifications and Communication of Data Needs		4.0			8.0				12.0	\$1,856.00
Manual Takeoff/Input of Sewer Inverts (QA/QC of City-Supplied Data)		4.0			8.0	16.0			28.0	\$3,568.00
Set up GIS Base Files (PCSWMM Format)		2.0			8.0	16.0			26.0	\$3,176.00
Research and Define Sewer Separation Updates					6.0	18.0			24.0	\$2,730.00
Data Validation, Connectivity Assessment and Gap Analysis										
Undertake Data Validation					8.0	16.0			24.0	\$2,784.00
Review System Connectivity and Profiles					4.0	20.0			24.0	\$2,676.00
ID Gaps for further investigation		1.0			2.0	4.0			7.0	\$892.00
Special Structure Characterization and Model Representation										
Code in Pump/Lift Stations					8.0	16.0			24.0	\$2,784.00
Identify and Code Hydraulically Significant Structures		4.0			4.0	16.0			24.0	\$3,032.00
Identify Survey Needs for Special Structures and Code in Model (Surveys by City)					4.0	8.0			12.0	\$1,392.00
QA/QC		4.0							4.0	\$896.00
Task 2: Initial Model Build (Un-calibrated)										
Catchment Delineation and Characterization										
Delineate Catchments & Associate to Collection System	2.0				8.0	24.0			34.0	\$3,900.00
Establish Effective Areas & Hydrology Parameters	2.0	2.0			4.0	20.0			28.0	\$3,328.00
DWF - Establish Populations and ICI Areas & Rates	2.0	1.0			12.0	20.0			35.0	\$4,204.00
Initial Model Build (un-calibrated model)										
Import observed flow and rainfall data into model					1.0	8.0			9.0	\$990.00
Import Network Data and Catchments					4.0	8.0			12.0	\$1,392.00
Review RDI Parameters and Assign to Un-monitored Catchments		4.0	2.0	2.0	8.0	16.0			32.0	\$4,408.00
QA/QC		4.0							4.0	\$896.00
Task 3: Flow Monitoring Program										
Phase 1 Monitoring Program (5 sites - 3 months)										
Prepare and Install Flow Monitoring Equipment	2.0			5.0		35.0	5.0		47.0	\$5,355.00
Initial Level/Velocity Checks and Site Quality Assurance	2.0			4.0		35.0	5.0		46.0	\$5,159.00
In-Field Data Checks as necessary (by City staff)									0.0	\$0.00
Data Management and QA/QC (bi-weekly checks and Monthly Data Reports)				2.0		4.0	8.0		14.0	\$1,412.00
Rental, Supplies, Mileage, Hotel, per diem, and subcontractor										\$21,500.00
Equipment Removal (to be confirmed or program extended)	2.0			7.0		35.0	4.0		48.0	\$5,673.00
Optional: Phase 2 Monitoring Program (5 sites - 2 or 3 months)										
In-Field Data Checks as necessary (by City staff)									0.0	\$0.00
Data Management and QA/QC (bi-weekly checks and Monthly Data Reports)									0.0	\$0.00
Equipment Removal (to be confirmed or program extended)									0.0	\$0.00
Task 4: Baseline Model Calibration and Validation TM										
Review of Monitoring/Rainfall Data and Selection of Calibration Events										
Review historical data for calibration/validation events		2.0			4.0				6.0	\$928.00
Review 2014 Monitoring and Data for Calibration/Validation Events		2.0			4.0				6.0	\$928.00
Prepare data for comparison with model					2.0	6.0			8.0	\$910.00
Model Calibration and Validation										
Run model and validate responses		4.0			16.0	20.0			40.0	\$5,068.00
Review DWF and Adjust as Needed		1.0			6.0	8.0			15.0	\$1,856.00
Review RDI and Adjust as Needed		4.0	2.0	2.0	8.0	16.0			32.0	\$4,408.00
Validate model with operational data at WWTP		2.0			4.0	4.0			10.0	\$1,356.00
Collection System Model Technical Memos and Report	2.0	6.0			20.0	30.0			58.0	\$7,326.00
QA/QC	4.0	4.0	4.0	4.0					16.0	\$2,984.00
Optional: Development of Dual Drainage Model (Combined Area)										
Phase 1 - 1D surface model development (Combined Area)										
Collect Inventory of CBs (i.e., Storm)									0.0	\$0.00
Develop DEM and delineate overland catchments, ponding areas and spill points									0.0	\$0.00
Field Surveys to validate critical locations									0.0	\$0.00
Coding of surface model in PCSWMM									0.0	\$0.00
Model Test Runs and Validation									0.0	\$0.00
Phase 2 - 2D surface model for select combined areas										
Delineate critical areas for 2D model development									0.0	\$0.00
Coding of 2D surface model in PCSWMM									0.0	\$0.00
Model Test Runs and Validation									0.0	\$0.00
Dual Drainage Model Report									0.0	\$0.00
QA/QC									0.0	\$0.00
Sub-Totals	18.0	47.0	16.0	26.0	161.0	419.0	22.0	0.0	709.0	\$109,767.00
Total Person-Hours	82.0	90.0	16.0	26.0	180.0	419.0	22.0	0.0	835.0	
Total Labor Cost	\$10,660	\$17,640	\$3,584	\$5,096	\$24,120	\$44,833	\$1,628	\$0	\$107,561.00	\$129,061.00
Time Commitment Required	9%	9%	2%	3%	19%	44%	2%	0%		
Total Days in Schedule	120	120 days	days							

Expenses \$3,439.00

TOTAL : \$132,500.00

Optional: Addition Flow Monitoring		Equipment Quantity	Months to Monitor	Per Meter Per Month	Rental Cost
Flow Monitoring Rental (5 Rentals)		5	2	\$500.00	\$5,000.00
Rain Gauge Rental		1	2	\$150.00	\$300.00
Wireless Fees		5	2	\$30.00	\$300.00
Batteries and Supplies		5	2	\$75.00	\$750.00
Subtotal					\$6,350.00

ATTACHMENT E: 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:

AASHTO	American Association of State Highway and Transportation
AGC	Associated General Contractors of America
AIA	American Institute of Architects
ANR	Agency of Natural Resources
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
AWS	American Welding Society
AWWA	American Water Works Association
CADD	Computer Aided Drafting and Design
CES	Contractor Engineering Services
CFR	Code of Federal Regulations
DOT	United States Department of Transportation
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EDM	Electronic Data Media
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration, U.S. Department of
FRA	Federal Railroad Administration
FSS	Federal Specifications and Standards (General Services
FTA	Federal Transit Administration
SIR	Self Insured Retention
U.S.C.	United States Code
USEPA	United States Environmental Protection Agency
VAOT	Vermont Agency of Transportation
VOSHA	Vermont Occupational Safety and Health Act
VSA	Vermont Statutes Annotated
WEF	Water Environment Association

1. INDEMNIFICATION:

The 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.

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.

2. 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.

3. 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. Evidence of compliance with minimum limits and coverages, 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 workers 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 insureds.

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

(a) All SUB-CONTRACTORS, agents or workers meet the minimum coverages 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 coverages shall include adequate protection for activities involving hazardous materials.

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

No warranty is made that the coverages 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	\$2,000,000
3. Personal & Advertising Injury	\$1,000,000
4. Each	\$1,000,000
5. Fire Damage (Any one fire)	\$ 250,000
6. Med. Expense (Any one	\$ 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:

\$3,000,000 - Annual Aggregate
\$1,000,000 - 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.

VALUABLE PAPERS INSURANCE: The CONTRACTOR shall carry valuable papers insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other data relating to the work, whether supplied by the CITY or developed by the CONTRACTOR, SUB-CONTRACTOR, worker or agent, in the event of loss, impairment or destruction of these documents. Such coverage shall remain in force until the final plans, and all related materials, have been delivered by the CONTRACTOR to, and accepted by, the CITY.

The policy shall provide coverage on an each occurrence basis with limits not less than:

Valuable Papers	\$10,000
Electronic Data Media	\$10,000

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

4. 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.

5. 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.

6. DEBARMENT CERTIFICATION:

When signing a Contract, the CONTRACTOR certifies under the penalty of perjury as directed by Federal laws (48 CFR 52.209-5), that, except as noted in the Agreement, the CONTRACTOR or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds:

(a) is not currently under suspension, debarment, voluntarily exclusion or determination of ineligibility by any Federal agency;

(b) has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;

(c) does not have a proposed debarment pending; and

(d) has not been indicted, convicted, or had a civil judgment rendered against him/her by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Exceptions will not necessarily result in denial of the Contract but will be considered in determining the CONTRACTOR's responsibility. The Agreement shall indicate any exception and identify to whom or to what CITY it applies and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

Exceptions shall be noted in the Contract.

7. 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.

8. **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

9. **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.
10. **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.

11. **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 subagreements shall contain all of the same provisions for and attached to the original agreement with the CITY.

12. **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.
13. **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 Consultants, 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 Consultants may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.
14. **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, the State of Vermont and the United States Government 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.
15. **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.

16. 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.

17. 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.

18. 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.

19. 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.

20. **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 for final deliverables or for PROJECT completion shall be granted only by amendment, and only for excusable delays, such as delays beyond the control of the CONTRACTOR and without the fault or negligence of the CONTRACTOR. Time extensions for interim milestones may be granted through written acknowledgement by the CITY.

21. **SETTLEMENTS OF MISUNDERSTANDINGS:** In order to prevent misunderstandings and litigation, it is mutually agreed by all parties that the City Council 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.

22. **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.

23. **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.

24. 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

25. 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.

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

27. 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.

28. 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.

29. **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

30. 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.

31. **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) VAOT'S latest edition of the Standard Specifications for Construction.
- (b) VAOT'S Bridge Design Manual.
- (c) All applicable AASHTO roadway, traffic, bridge, bicycle and pedestrian policies, guides and manuals.
- (d) VAOT'S Manual on Survey.
- (e) VAOT'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.

32. **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.

33. 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:

- 34. 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 tasks.

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.

- 35. 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.

- 36. 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, that 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.

ARTICLE VI. LIVABLE WAGES*

*Cross references: Personnel, Ch. 24.

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 not dependent on public assistance, to meet their basic needs;
- (c) The city 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 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 and employees of entities that enter into service contracts or receive financial assistance from the City of Burlington.

(Ord. of 11-19-01)

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 contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods) where the total amount of the contract or 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 subcontractors 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.
- (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 funded by the city, notwithstanding that the employee may be a 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 is a "covered employee".

(e) *Employee* means a person who is employed on a full-time or part-time regular basis (i.e., nonseasonal). "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 through youth employment programs or student workers or interns participating in established educational internship programs.

(f) *Employer assisted health care* means health care benefits provided by employers for employees (or employees and their dependents) at employer cost or at an employer contribution towards the purchase of such health care benefits provided that the employer cost or contribution consists of at least one dollar and twenty cents (\$1.20) per hour. (Said amount shall be adjusted every two (2) years for inflation, by the chief administrative officer of the city.)

(g) *Livable wage* has the meaning set forth in section 21-82.
(Ord. of 11-19-01)

Sec. 21-82. Livable wages required.

(a) Every covered employer shall pay each and every covered employee at least a livable wage as established under this article.

(1) For a covered employer that provides employer assisted health care, the livable wage shall be at least nine dollars and ninety cents (\$9.90) per hour on the effective date of 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 (\$11.68) per hour on the effective date of this article [Dec. 19, 2001].

(3) Tipped covered employees and other covered employees whose compensation consists of more than hourly wages shall be paid an hourly wage which, when combined with the other compensation, will at least equal the livable wage as established under this article.

(b) The amount of the livable wage established in this section shall be adjusted by the chief administrative officer of the city, as of July/March 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 utilizing a model of two (2) adults residing in a two (2) 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. Prior to May/March first of each calendar year, 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 provided an address of record to the chief administrative officer, by written letter to each such covered employer.

(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 leave.

(Ord. of 11-19-01)

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 are being expended.

(Ord. of 11-19-01)

Sec. 21-84. Enforcement.

(a) The City of Burlington shall require, as a condition of any contract or grant covered by this section, that the affected covered employer submit a written certification, under oath, 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, as deemed necessary by the chief administrative officer of the City of Burlington within ten (10) business days from receipt of the city's request.

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

(c) 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.

(d) A violation of this article shall be a civil offense subject to a civil penalty of from two one hundred dollars (\$2100.00) 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.

(Ord. of 11-19-01; Ord. of 2-17-04)

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) 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(c), shall the wage rates paid pursuant to that contract be less than the minimum livable wage paid pursuant to this article.

(c) Notwithstanding subsection 21-85(b), where employees are represented by a bargaining unit or labor union pursuant to rights conferred by state or federal law and a collective bargaining labor agreement is in effect governing the terms and conditions of employment of those employees, this chapter shall not apply to those employees, and the collective bargaining labor agreement shall control.

(d) 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.

(e) 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.

(Ord. of 11-19-01)

Sec. 21-86. Exemptions.

A partial or complete exemption from the requirement of this article may be authorized based upon a determination that compliance with the livable wage requirement would cause substantial economic hardship. Requests for exemption shall be submitted to the chief administrative officer. The finance board of the city 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.

(Ord. of 11-19-01)

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.

(Ord. of 11-19-01)

Secs. 21-88, 21-89. Reserved.



Livable Wage Ordinance

Are You
Receiving
A Livable
Wage?

The Burlington Livable Wage Ordinance requires that if you are working on a specific City of Burlington service contract or subcontract above a certain amount your employer must pay you at least \$13.94 an hour with health insurance.

\$13.94

If you are working on a specific City of Burlington service contract or subcontract above a certain amount your employer must pay you at least \$15.83 an hour without health insurance.

\$15.83

What Are
Your Rights
Under the
Livable Wage?

All employees who work directly on a City of Burlington service contract or a subcontract may be eligible. To find out if you are covered by the Livable Wage Ordinance you may call the Office of the Chief Administrative Officer at 802/865-7000.

Are You
Eligible to
Receive The
Livable Wage?

Covered employees are required to be paid at least the above amounts. If you are covered and your employer reduces your pay, your employer shall be considered in violation. You are protected by law if you assert your rights under the Livable Wage Ordinance.

Why Report A
Livable Wage
Violation?

If your employer is required to be paying you the Livable Wage and is not, he or she may be required to pay you back wages and be subject to any other appropriate action as outlined in the Ordinance.

Employee
Earned
Income Tax
Credit

Are you raising a family and making less than \$30,000? If so, you could be eligible to receive the Earned Income Tax Credit (EITC.) You may even be eligible if your income is so low that you do not owe any taxes. The EITC can reduce your taxes or provide a cash refund. There is a federal and state EITC, so ask about both. To find out if you qualify and how to get this benefit speak to your employer's payroll clerk or call IRS at 1.800.TAX.1040.

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

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

Dated at _____, Vermont this ____ day of _____, 2013.

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary

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

Article VII Outsourcing

It is the policy of the City of Burlington to let service contracts to contractors, subcontractors and vendors who perform work in the United States.

(Ord. of 11-21-05/12-21-05)

Sec. 21-91. - Definitions.

(a)

Contractor or vendor. A person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods), including any subcontractors of such contractor or vendor.

(b)

Government funded project. Any contract for services which involves any city funds and the total amount of the contract is fifty thousand dollars (\$50,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.

(c)

Outsourcing. The assigning or reassigning, directly, or indirectly through subcontracting, of services under a government funded project to workers performing the work outside of the United States.

(Ord. of 11-21-05/12-21-05)

Sec. 21-92. - Implementation.

(a)

No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who is outsourcing, or causing the work to be performed outside of the United States or Canada.

(b)

Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that the services provided under the contract will be performed in the United States or Canada.

(Ord. of 11-21-05/12-21-05)

Sec. 21-93. - Exemption.

An exemption from requirements of this article may be authorized by the chief administrative officer based upon a determination that the services to be performed for the government funded project are not available in the United States or Canada at a reasonable cost. Any such exemption decision by the chief administrative officer shall be reported to the board of finance in writing within five (5) days. The board of finance may, if it should vote to do so, override the exemption decision if such vote occurs within fourteen (14) days of the date of the chief administrative officer's communication to such board.

(Ord. of 11-21-05/12-21-05)

- 1) Advises or has advised an employer to conduct any illegal activity in its dealings with a union.
 - 2) Advertises union deterrence services as specialty services;
 - 3) Earns a substantial portion of its income by providing union deterrence services to other companies in order to defeat union organizing efforts.
- (b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that it 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 this article.

(Ord. of 3-27-06 4-26-06)

Sec. 21-103. - Enforcement

- (a) Any contractor, subcontractor or vendor who files false or materially misleading information in connection with an application, certification or request for information pursuant to the provisions of this article or provided union deterrence services during the life of a contract for a government funded project shall be deemed to be in violation of this article.
- (b) The City of Burlington shall have the right to modify, terminate and or seek specific performance of any contract for a government funded project if the contractor, subcontractor or vendor has not complied with this article.

(Ord. of 3-27-06 4-26-06)

Secs. 21-104—21-110. - Reserved.

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

Dated at _____, Vermont this ____ day of _____, 20__.

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary