

AGREEMENT

THIS AGREEMENT is made as of _____, by and between **CITY OF BURLINGTON, VERMONT**, a municipal corporation organized under the laws of the State of Vermont, acting by and through **BURLINGTON ELECTRIC DEPARTMENT**, and **KPMG L.L.C.**, a professional corporation doing business in the State of Vermont with its principal place of business in Burlington VT, (hereinafter referred to as “**Contractor**”),

RECITALS:

- A. WHEREAS, in compliance with 24 V.S.A. App. §3-156 and 24 V.S.A. §§1683, 1684, the City is required to have annual audits performed by independent public accounting firms for all city departments and areas and have audit reports generated;
- B. WHEREAS, on February 9, 2010, the City published a Request for Proposals (RFP) (Attached) to present the opportunity for qualified firms to bid on the audit of the financial statements of the City, said bid to cover annual examinations of the financial statements of all the entities and areas listed in this RFP for Fiscal Year ending June 30, 2010 through Fiscal Year ending June 30, 2014 (five fiscal years);
- C. WHEREAS, based on the evaluation criteria process set forth in the February 9, 2010 RFP, BED selected Contractor, on the basis of its Audit Proposal (Attached) to provide the products and services set forth in the RFP;

NOW, THEREFORE, in consideration of the fees and mutual covenants contained herein, and intending to be legally bound hereby, the Parties agree as follows:

Contractor's Responsibilities

1. Contractor agrees to provide the products and perform the auditor services for Fiscal Years ending June 30, 2010 – 2014 as set forth in the RFP, Section Cost Proposal, posting dated March 5, 2010 including all attachments, unless such products and services are expressly excluded by this Agreement. Such responsibility does not extend to matters that might arise during any later periods for which Contractor is not engaged as auditor.
2. Contractor agrees to provide such products and services pursuant to the terms and conditions set forth in said RFP, Section I, including all terms and conditions within all attachments, unless said terms and conditions are expressly excluded by this Agreement. Such products, services, terms and conditions are hereby incorporated by reference into this Agreement.
3. The Parties agree that the RFP services and products, terms and conditions Contractor shall provide and adhere to include, but are not limited to, those stated in the following provisions in the RFP, Cost Proposal, and pertinent RFP attachments: Scope of Audit, Auditing Standards, Comprehensive

Annual Financial Report, Single Audit, Additional Detailed Reports and Other Considerations, Auditor's Responsibilities under Vermont State Statutes, Management Discussion & Analysis, Management Letters, Notes and Disclosures, As Needed Accounting and Audit-Related Services, Offer of Gratuities, Inspection of Work Performed, Exemption of Records, Accounting System, Compliance with Laws and Regulations, Staffing, Lead Role, City Approval Rights over Subcontractors and Subcontractor Payments.

4. In addition to the services and products, terms and conditions set forth in the RFP, Contractor agrees to provide the additional services, take the audit approach, and perform the contract under the general terms and conditions set forth in its Audit Proposal, submitted March 5, 2010. In the event that there is a conflict between the services and products, terms and conditions stated in the RFP and those stated in Contractor's Audit Proposal, the RFP shall prevail and apply.
5. Contractor agrees that it shall coordinate its efforts with BED. Contractor agrees that it shall provide the Comprehensive Annual Financial Report directly to the CFO of BED, BED's Commission and then the Board of Finance. Contractor agrees that the management letters shall be presented to the CFO of BED, BED Electric Commission and the Board of Finance for review.

The Parties acknowledge that the City Charter §155 provides for the Board of Finance to act as the City's Board of Audit. This provision makes the Board of Finance directly responsible for the appointment, compensation, retention, and oversight of the work of any independent accountants engaged for the purpose of performing independent audit services and preparing or issuing an independent audit report. All accountants thus engaged report directly to the Board of Finance.

The Parties acknowledge that it is the responsibility of BED:

- to maintain a point of contact and provide a direct and separate line of communication between BED and the independent auditors;
- to meet with the independent auditors to review the audited financial statement and auditor's report on such matters as the quality and depth of management and compliance;
- to recommend appropriate action to be taken by BED to implement recommendations contained in the audit report;
- to follow-up, as necessary, to ensure that approved recommendations are promptly implemented.
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City's Responsibilities

6. BED agrees to develop financial statements and notes; thereafter, Contractor agrees to produce on request the final published financial statements. BED

agrees it is responsible for making all management decisions, will appoint a competent employee to oversee work performed by Contractor, will evaluate the adequacy of any results provided by Contractor, and will establish controls and monitoring of all services provided by Contractor. BED will arrange for office space, equipment and access to the BED's online financial system, as determined and approved by BED.

In its sole and absolute discretion, BED will make appropriate staff available to provide assistance to Contractor. Such assistance may include coordinating the audit field work, identifying locations of required records and documentation, preparing and/or obtaining listings of account balances/transactions, providing reasonable detailed analysis and reconciliation of various accounts being audited and other such tasks which will serve to speed the conduct of services.

Term & Dates of Performance

7. Performance by Contractor shall commence by March 29, 2010. Performance shall be completed by December 31, 2014, at which time Contractor shall have provided BED with its final finished product. Annual performance shall be performed in accordance with BED's annual Master Audit Plan.

The Parties agree that the following are approximate key dates in connection with the annual audits to be performed under this contract. Actual dates will be set each year by BED in the master audit plan.

	<u>Annually</u>
Audit plan to be presented to BED and Audit Committee	April 20
Interim work to be completed	May 15
Final field work to begin	August 1
Financial statements for various reporting entities to be finalized	September 30
CAFR to be completed and submitted for reproduction	November 19
Final Management Letter	October 15
Single Audit Compliance Report to be issued	December 31

Compensation

8. BED agrees to pay Contractor for the fiscal years ending June 30 as follows: \$71,000 for FY 2010; \$74,250 for FY 2011; \$78,000 for FY 2012; \$82,000 for FY 2013; and \$86,500 for FY 2014. The time and manner of payment are as follows: Progress payments will be made on the basis of work completed during the course of the audit. Interim billings shall cover a work period of not less than thirty days. Ten percent of each billing will be withheld pending delivery of the audited financial statements, management letters, and other required reports.

Termination & Damages

9. In the event Contractor fails to fulfill any of the terms or conditions of this Agreement in the time set, BED shall have the right to terminate the Agreement and award a new contract to another Vendor. In the event this Agreement is so terminated, Contractor shall be responsible for damages and for additional costs incurred in advertising, reviewing, and awarding the contract, including any additional cost of providing the services and products required and reasonable attorneys' fees.

Insurance

10. The contractor shall agree to provide and maintain the following types and amounts of insurance for the term of this contract. This insurance shall be obtained from an insurer having an A.M. Best Insurance Rating of at least A-, financial size category VII or greater. [www.ambest.com].

- a. **Commercial General Liability Coverage:**

Commercial General Liability Insurance including but not limited to Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations Liability and Contractual Liability with limits of, at a minimum, \$1,000,000 Combined Single Limit for each occurrence.

Contractor must list the City as Additional Insured's on their Commercial General Liability Policy.

- b. **Commercial Auto Coverage:**

Commercial Auto Liability Insurance covering all Owned & Hired and Non-Owned vehicles, with limits of, at a minimum, \$1,000,000 Combined Single Limit for each occurrence.

Contractor must list the City as Additional Insured's on their Commercial Auto Liability Policy.

- c. **Workers' Compensation & Employers Liability Insurance:**

Statutory Worker's Compensation Insurance and Employers Liability with limits of, at a minimum, \$1,000,000 for any one occurrence.

Contractor must provide proof of Workers Compensation and Employers Liability Insurance Coverage to BED within 15 days of the execution of this Agreement.

- d. **Property Insurance**

All risk property insurance on a full replacement cost basis for all of Contractor's real and personal property and personal property of others in the Contractor's care custody or control which is located on or in any of the City's premises.

e. **Professional Liability Insurance:** (Errors and Omissions Coverage)

Professional Liability Insurance Coverage for \$1,000,000 Each Occurrence and \$3,000,000 annual aggregate.

Contractor must list BED as the Additional Insured's on their Professional Liability Policy.

f. **Certificates of Insurance**

The Contractor shall provide the Named Member with such Certificates of Insurance, as required above, prior to the commencement of the Agreement.

All Certificates shall contain a provision stating that the coverage's afforded under said policies will not be cancelled, materially changed or not renewed without thirty (30) days written prior notice , except ten (10) days for non-payment of premium, to BED.

g. **Subcontractor's Insurance**

Subcontractors must comply with the same insurance requirements as Contractor.

Independent Contractor

11. Contractor warrants that it is not an employee of the City but is an independent contractor, solely responsible for performing the audit. Contractor warrants that it does not exclusively perform work for the City and is not treated by the City as an employee for income or employment taxation for undertaking this activity.

Conflict of Interest

12. Contractor agrees that it will comply fully with and be bound by the applicable provisions of state and local law related to conflicts of interest, including but not limited to City Charter § 133. Contractor agrees that it will be familiar with these laws and agrees to immediately notify City if it becomes aware of any fact that does or may constitute a violation of these provisions. Contractor, by the execution of this contract, certifies that it does not know of any facts that constitute a violation of any conflict of interest law as of the date of execution.

Livable Wage

13. Contractor agrees to comply with the City of Burlington's livable wage ordinance, Code of Ordinances § 21-82, which is applicable to service contracts with Burlington Electric Department where the amount of the

contract or contracts with the same person or entity exceeds \$15,000 for any twelve-month period. As of March 1, 2009, the livable wage for employees who receive health care benefits is \$14.21 per hour. The livable wage for employees who do not receive health care benefits is \$15.83 per hour. Contractor agrees to pay its employees working under this Agreement at least the livable wage during the period of time he or she expends on furnishing services funded by the City. Contractor understands that a covered employer who violates the livable wage ordinance may be barred from receiving a contract or grant from the City for a period of up to 2 years and may be subject to other civil enforcement remedies.

Non-Discrimination

14. Contractor agrees that it shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, sexual orientation, religion, and place of birth, or against a qualified individual with a disability. Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including, but not limited to: Title VII of the Civil Rights Acts of 1964; the Age Discrimination in Employment Act of 1973; the Americans With Disabilities Act; Title 21, Subchapter 6 of the Vermont Statutes Annotated, Fair Employment Practices; and all other applicable administrative orders and executive orders. Contractor shall be responsible for preparing all periodic reports related to these purposes and required by law or regulation.

Contractor agrees that if a complaint or claim alleging violating by it of such statutes, rules or regulations is presented to the Vermont Attorney General's Office, the Vermont Human Rights Commission, the Equal Employment Opportunity Commission or any other agency with jurisdiction, Contractor shall cooperate fully in the investigation and disposition of such complaint or claim.

Contractor agrees to indemnify, defend and save BED and its authorized agents, officers, representatives and employees harmless from and against any and all actions, penalties, liabilities, claims, demands, damages or losses, including reasonable attorneys' fees resulting from any claims asserting any form of discrimination or harassment as defined by state and/or federal law and by City Policy based on acts by the Contractor, its agents, officers, representatives, employees or contractors.

Indemnification

15. Contractor agrees, to the fullest extent permitted by the law, that it shall indemnify and hold harmless BED, its officers, agents and employees from liability for damages to third parties, together with costs, including attorney's fees, incurred in defending such claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of

Contractor, its agents or employees, committed in the performance of the professional services to be provided by the Respondent under this Agreement.

BED agrees that is responsible for its own actions and that Contractor is not obligated to indemnify BED or its officers, agents and employees for any liability of BED, its officers, agents and employees attributable to its, or their own, negligent acts, errors or omissions.

In the event BED, its officers, agents or employees are notified of claims asserted against it or them to which this Indemnification clause may apply, BED agrees that it shall immediately thereafter notify Contractor in writing that a claim to which the Indemnification Agreement may apply has been filed.

Severability

16. The Parties agree that in the event any provision of this Agreement is determined by a court of competent jurisdiction to be invalid under or in conflict with any applicable statute or any regulation or order of any regulatory agency having jurisdiction, such determination shall not result in the invalidation of the entirety of the Agreement, and all remaining provisions shall remain in full force and effect. The Parties shall attempt by mutual agreement to arrive at an amendment of this Agreement which eliminates such invalidity or conflict while at the same time permitting the accomplishment of the objectives of this Agreement.

Notices

17. Any notice, demand, consent, approval, or request made by a Party to the other pursuant to any provision of this Agreement shall be made in writing and shall be delivered in person, or by certified mail, return receipt requested, as follows:

If to BED: Daryl Santerre
 Burlington Electric Department
 585 Pine St
 Burlington VT 05401

If to Contractor: KPMG LLC
 Renee Bourget-Place
 PO Box 564
 Burlington VT 05401

Each Party shall have the right to add or delete name(s) and address(es) to whom notice shall be given by giving the other Party prior written notice of such change(s).

Nonwaiver

- p 18. Any waiver at any time by either Party of its rights with respect to any terms, conditions, remedies or defaults under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be construed or deemed to be a continuing waiver of the same or any other matter arising in connection with this Agreement and cannot be construed or deemed a waiver with respect to any subsequent default or other matter.

Complete Agreement

19. All the provisions of this Agreement are set forth in the writing herein which alone fully and completely expresses the agreement of BED and Contractor relating to this Agreement. This Agreement is entered into after full investigation and consideration by all Parties.
be amended, except by instrument in writing, signed by the Parties hereto.

IN WITNESS WHEREOF, the Parties executed this Agreement the day and year first above written.

IN THE PRESENCE OF:

Burlington Electric Department

By: _____
Daryl Santerre
Duly Authorized Officer

KPMG LLC

By: _____
Renee Bourget-Place
Duly Authorized Officer