

CITY OF BURLINGTON
REQUEST FOR PROPOSALS

PARKING MANAGEMENT SYSTEM

Issued: May 9, 2022

Due: ~~May 27, 2022~~ June 3, 2022

I. **PROJECT BACKGROUND**

The Department of Public Works manages a wide variety of parking products (transient, monthly permit, resident permit, guest permit, etc.) in the right-of-way, in lots, in lots owned by other City Divisions, on private property and in garage structures. As this system grows in complexity and the expectations of customers increase, the City has an ever evolving need for cutting edge systems to manage parking efficiently and effectively. This Request for Proposals seeks to solicit the most up-to-date and modern Parking Management System that can sell parking products, streamline the enforcement of parking regulations, and aggregate parking activities from other parking services into a single Dashboard.

II. **SCOPE OF WORK**

See Exhibit A: Scope of Work

III. **RESPONSE FORMAT**

Proposals must:

- Clearly address the Scope of Work
- Articulate the rollout/go-live timeline
- Detail all associated costs
- Present total net present value of the estimated lifetime cost of operation/ownership for the maximum contract term (up to 5 years, see scope of work for detail).
- References from three (3) comparable municipalities with populations between 50,000 and 150,000 people.

Submit proposals digitally in a **single PDF** to lducharme@burlingtonvt.gov

Questions related to this request should be directed to Leonard Ducharme, Parking Services Manager at the email address above.

IV. CONTRACTOR SELECTION

The following will be used to inform the selection of the winning bid:

- Apparent ability to Satisfy the Scope of Work
- Cost of Base Bid
- Cost of Add-on Bid
- Input from References
- Overall Price

The contractor that is deemed to provide services that best suit the needs of the City of Burlington will be selected.

No proposal will be considered accepted and/or project awarded until all necessary City authorizations, including any required by Board of Finance and City Council, have been received and an agreement is executed between the City and the prospective awardee.

V. SUBMISSIONS

As necessary to support the proposal.

VI. EXHIBITS

- Exhibit A: Scope of Work
- Exhibit B: Draft Contract
- Exhibit C: Burlington Standard Contract Conditions
- Exhibit D: Burlington Livable Wage Ordinance Certification
- Exhibit E: Burlington Outsourcing Ordinance Certification
- Exhibit F: Burlington Union Deterrence Ordinance Certification

Bid documents include this main body of the request for proposals and all exhibits.

VII. CONTRACTING

The contractor must qualify as an independent contractor and, prior to being awarded a contract, must apply for registration with the Vermont Secretary of State's Office to do business in the State of Vermont, if not already so registered. The registration form may be obtained from the Vermont Secretary of State, 128 State Street, Montpelier, VT 05633-1101, PH: 802-828-2363, Toll-free: 800-439-8683; Vermont Relay Service – 711; web site: <https://www.sec.state.vt.us/>. The contract will not be executed until the consultant is registered with the Secretary of State's Office.

Prior to beginning any work, the consultant shall obtain Insurance Coverage in accordance with the Burlington Contract Conditions (Exhibit C in this RFP). The certificate of insurance coverage shall be documented on forms acceptable to the City.

VIII. AGREEMENT REQUIREMENTS

The selected consultant will be required to execute a contract with the City on the terms and conditions required by the City, including but not limited to those in the Burlington Contract Conditions (Exhibit C) and the attached Draft Agreement.

IX. LIMITATIONS OF LIABILITY

The City assumes no responsibility or liability for the response to this Request for Proposals.

X. COSTS ASSOCIATED WITH PROPOSAL

Any costs incurred by any person or entity in preparing, submitting, or presenting a proposal are the sole responsibility of that person or entity, including any requests for additional information or interviews. The City will not reimburse any person or entity for any costs incurred prior to the issuance of the contract.

XI. INDEMNIFICATION

Any party responding to this Request for Proposals is acting in an independent capacity and not as an officer or employee of the City. Any party responding to this Request for Proposals will be required to indemnify, defend, and hold harmless the City, its officers, and employees from all liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the responding party's acts and/or omissions in or related to the response.

XII. REJECTION OF PROPOSALS

The City reserves the right to reject any or all proposals, to negotiate with one or more parties, or to award the contract to the proposal the City deems will meet its best interests, even if that proposal is not the lowest bid. The City reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals. This Request for Proposals in no way obligates the City to award a contract.

XIII. OWNERSHIP OF DOCUMENTS

Any materials submitted to the City in response to this Request for Proposals shall become the property of the City unless another arrangement is made by written agreement between the City and the responding party. The responding party may retain copies of the original documents.

XIV. DUTY TO INFORM CITY OF BID DOCUMENT ERRORS

If a bidder knows, suspects, or has reasonable cause to believe, that an error or omission exists in any bid documents, including but not limited to unit prices and rate calculations, the bidder shall immediately give the City written notice thereof. Contractor shall not cause or permit any work to be conducted that may related to the error or omission without first receiving written acknowledgment from the City that City representatives understand the possible error or omission and have approved the requested modifications to the bid or contract documents or that the contractor may proceed without any modification being made to the bid or contract documents.

XV. PUBLIC RECORDS

Any and all records submitted to the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be

handled is solely within the purview of City. All records the responding party considers to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, or that the responding party otherwise seeks to have the City consider as exempt must be identified clearly and specifically at the time of submission. It is not sufficient to merely state generally that a proposal is proprietary, contains a trade secret, or is otherwise exempt. Particular records, pages, and sections which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

XVI. PUBLIC HEALTH EMERGENCIES

Bidders are advised that public health emergencies, as declared by the City, the State of Vermont, or the Federal Government, including the current pandemic of Novel Coronavirus (COVID-19), may introduce significant uncertainty into the project, including disruption of timelines or revised practices. Contractors shall consider public health emergencies as they develop project schedules and advance the work.

The City may require a public health emergency plan be submitted as part of the bid. This plan will contain:

- 1) Measures to manage risk and ensure that potential impacts to safety and mobility are mitigated in accordance with health and safety standards and guidelines proposed by local, state, and federal agencies (see attached Draft Contract, Sections 15 and Exhibit B);
- 2) A schedule for possible updates to the plan in advance of the start of work (see attached Draft Contract, Section 15); and
- 3) Means to adjust the schedule and sequence of work should the emergency change in nature or duration.

The City will have sole discretion to approve, deny, or require changes to this plan as a condition of consideration of the bid, will retain the right to inspect all work to ensure compliance with health and safety standards, and may at any time require the contractor to stop work because of the emergency.

If a public health emergency is declared, the City will not be responsible for any delays related to the sequence of operations or any expenses or losses incurred as a result of any delays. Any delays related to public emergencies, including the current pandemic of Novel Coronavirus (COVID-19), will be excusable, but will not be compensable.

EXHIBIT A: Scope of Work

Parking Management Software

- Base Bid
 - Parking Management Software as a Service (SAAS) must include
 - Fully integrated management of
 - Permits
 - Citations
 - Payments
 - Fees
 - Fines
 - Towing
 - Impoundments
 - Other Parking Related Management Services
 - SAAS efficiently conveys how, why and when these parking event happened and to whom. Including how each event is related to the other events. For example, link towing events to citations issued so either can be searched.
 - Customer facing online portal for:
 - online permit requests
 - permit waitlists
 - ticket payment
 - ticket appeals
 - use of discount or promo codes, conditioned on eligibility
 - towed vehicle status and/or location
 - general parking account management
 - Permit sales based on plate number for
 - On-street non-metered parking permits, by zone
 - On-street metered parking permits, by zone
 - Garage/Lot Permits
 - Weekly
 - Monthly
 - Punch Card
 - Event Permits
 - Pre-purchase option (reservation)
 - Citations for
 - Safety Violations
 - Regulatory Violations
 - Cloud based, hosted environment
 - PCI Compliant Hosting Services for payment

- Aggregation of transaction activity from multiple sources into a single dashboard (i.e. aggregate ParkMobile, CALE and IPS transaction data)
- Aggregation of Validations (i.e. one code valid on all platforms)
- Account based records
 - Specify number of vehicles per account
 - Specify other account limits (ie. citations, permits, etc.)
- Automated notification to customers via hardcopy letter, text, email or other using custom, standardized forms / processes.
- Office Equipment
 - Point of Sale Terminal functional on City network
 - Credit Card Machine/Printer
 - All necessary components to collect payment
- Enforcement
 - 15 Mobile Enforcement App Licenses
 - Functionality on iOS or Android platforms
 - Temporary Off-line Functionality
 - Geo-located
 - LPR, QR, Camera and Manual plate entry enabled
 - Multiple Special Condition notifications (i.e. scoff, frequency, etc)
 - 15 Ticket Printers
 - API for real-time integration with the Parking Management SAAS
 - Smartphones provided by City
 - Offline mode for use in weak cell-service zones
 - Plate data not stored unless violation
 - Smart conversion of plate numbers for special characters (i.e. 1 v.s. I, etc.)
- Backend Services
 - Migration of existing T2Flex Database (as necessary)
 - Configuration of business rules for permits, violations, financial reporting and notifications
 - CJIS certified mailing of customer notification of violations and/or account status
 - 20 Custom Reports
 - Custom Database Query Functionality by user
 - Custom Report Development by user
 - Custom Fields configurable by user
 - Comprehensive Onsite Training
 - Ongoing Technical Support
 - Software Upgrades
 - Annual PCI Audit reports, including quarterly vulnerability scan and penetration testing

- Term
 - 3 Years with 2, 1 year extension options
- Warranty
 - At bidders discretion and subject to negotiation

- **Add-on Bid:** Mobile License Plate Recognition (LPR) Integration
 - LPR may be added into the contract at any time during the Term
 - Software Module
 - Software Integration Module SAAS
 - Full Configuration with Parking Management SAAS
 - LPR data retention/transmission limited to violations
 - Smart conversion of special characters
 - Hardware
 - Provision of LPR Cameras
 - Installation on two (2) existing City vehicles
 - Provision of associated computer tablet GUIs
 - Configuration of geo-fencing and business rules
 - Integration with Parking Management SAAS to identify violations in real-time, transmitting critical violation data
 - All hardware necessary for enforcement (computer, cables, mounts, printers, etc)
 - Services
 - Real-time occupancy count, logged by street, lot, garage, etc. at user discretion
 - Hosting as necessary to integrate with Parking Management SAAS
 - On-site training
 - Ongoing Technical Support
 - Ongoing Software Upgrades
 - Term
 - To match balance of Parking Management SAAS term.
 - Warranty
 - At bidders discretion and subject to negotiation

CITY OF BURLINGTON
DRAFT SOFTWARE LICENSE AGREEMENT

This Software License Agreement (“Agreement”) is entered into by and between the City of Burlington, Vermont (“the City” or “Licensee”), and [REDACTED] (“Licensor”), a Vermont corporation located at [REDACTED].

Licensor and the City agree to the terms and conditions of this Agreement.

1. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Agreement Documents”** means all the documents identified in Section 4 (Scope of Work) of this Agreement.
- B. **“Effective Date”** means the date on which this Agreement is approved and signed by the City, as shown on the signature page.
- C. **“Enhancements.”** See “Revisions,” “Updates,” or “Enhancements.”
- D. **“Internal Business Use”** means use by the City and the City’s subsidiaries, subsidiaries of subsidiaries, affiliated companies and employees and agents of each.
- E. **“Material Nonconformance”** means any nonconformance which prevents the Software from providing the functionality described by its documentation and Licensor’s written representations which the City in its reasonable discretion requires.
- F. **“Maintenance Service”** means (i) all Revisions, Updates, and Enhancements to the Software which are made generally available to other licensees of the Software at no cost or as a paid maintenance service; (ii) [number of hours] hours per day telephone technical support; (iii) updated software as required to operate under new releases of the operating system or other technical software required to execute the Software.
- G. **“New Version”** means the Software has been significantly enhanced and extended through the addition of substantial new capabilities.
- H. **“Party”** means the City or Licensor, and “Parties” means the City and Licensor.
- I. **“Project”** means the [REDACTED].
- J. **“Software”** means the [name of software product, followed by brief description of function of the software].
- K. **“Revisions,” “Updates,” or “Enhancements”** mean error corrections, modifications and

all changes and/or improvements to the Software that relate to operating performance but do not alter the basic function of the Software.

L. “Updates.” See “Revisions,” “Updates,” or “Enhancements.”

M. “Work” means the services described in Section 5 (Payment for Services) of this Contract, along with the specifications contained in the Agreement Documents as defined in Section 4 (Scope of Work) below.

2. RECITALS

A. Authority. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party’s obligations have been duly authorized.

B. Consideration. The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose. The City seeks to employ the Licensor to [REDACTED].

3. LICENSE

Licensor hereby grants the City and the City hereby accepts from Licensor a nonexclusive [term of license OR “perpetual”] license to use the Software in accordance with this Agreement. The City acknowledges and agrees that the Software is proprietary to Licensor and that this Agreement grants the City no title or right of ownership in the Software. The City may:

A. [Use the Software at the Site and on the Licensed CPU(s) designated in Addendum [number], entitled Product Schedule.]

B. Use the Software for its Internal Business Use. “Internal Business Use” means use by the City and the City’s subsidiaries, subsidiaries of subsidiaries, affiliated companies and employees and agents of each.

C. Make unlimited copies of the documentation for its Internal Business Use.

D. Modify the Software and/or merge it into another program for use on the single machines or network as provided in § 1(A). However, all copyright ownership in the Software shall remain with the Licensor.

E. Transfer the Software to another party provided (i) the other party agrees to accept the terms and conditions of this Agreement and (ii) Licensor has given written consent to the transfer, however, such consent shall not be unreasonably withheld by Licensor. If the City transfers the Software, the City agrees to transfer all copies whether in printed or machine readable form or destroy any copies not transferred; this includes all portions of the Software contained or merged into other software.

4. OWNERSHIP

Licensor retains title and ownership of the Software recorded on the original media and all subsequent copies of the Software regardless of the form or media in or on which the original and other copies may exist. The City agrees to reproduce and include the copyright notice on any copy, modification or portion merged into another program.

5. EFFECTIVE DATE, TERM, & TERMINATION

- A. Effective Date.** This Agreement shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Agreement before the Effective Date and shall have no obligation to pay Licensor for any performance or expense incurred before the Effective Date or after the expiration or termination of this Agreement.
- B. Term.** This Agreement and the Parties' respective performance shall commence on the Effective Date and expire on [redacted] or upon the satisfaction of the City, unless sooner terminated as provided herein.
- C. Termination by Either Party.** The City may terminate the license at any time by destroying the Software together with all copies, modifications, and merged portions in any form. Licensor may terminate the license upon [sixty (60)] days written notice in the event the City fails to perform its obligations pursuant to this Agreement unless (i) the City has cured the alleged violation within such [sixty (60)] days period; or (ii) the City responds in writing disputing the allegations. If at the end of the [sixty (60)] days period the City has not responded, the City shall be deemed in violation. If the City disputes the alleged violation and the City and Licensor cannot settle the dispute within [thirty (30)] days, the dispute shall be submitted to binding arbitration between the City and Licensor at a location convenient to both parties, and subject to the rules of the American Arbitration Association. Notwithstanding the preceding, no decision shall be final or enforceable unless or until there is a complete transcript of the hearing and the arbitrator(s) have given a written opinion fully setting forth the reasons for the decision. Within [number] month of any termination of this Agreement, the City shall destroy all copies of the Software in its possession or control.
- D. Termination for Convenience.** At any time prior to completion of services specified under the Agreement, the City may terminate the Agreement for any reason by submitting written notice via certified or registered mail to the Licensor, not less than fifteen (15) days prior to the termination date, of its intention to do so. If the termination is for the City's convenience, payment to the Licensor will be made promptly for the amount of any fees earned to the date of the notice of termination and costs of materials obtained in preparation for Work but not yet installed or delivered,

less any payments previously made. The Licensor shall make no claim for additional compensation against the City by reason of such termination.

- E. Cover.** In the event the City terminates this Agreement as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Licensor shall be liable to the City for all of its costs and damages, including, but not limited to, any excess costs for such services, interest, or other charges the City incurs to cover.
- F. No Termination Upon Bankruptcy.** In any bankruptcy action by Licensor, failure by the City to assert its rights to “retain its benefits” to the intellectual property encompassed by the Software, pursuant to § 365(n)(1)(B) of the Bankruptcy Code, 11 U.S.C. (“the Code”), under a executory contract rejected by the trustee in bankruptcy, shall not be construed by the courts as a termination of the contract by the City under § 365(n)-(1)(A) of the Code.
- G. Termination Assistance.** Licensor agrees to make available to the City all services necessary for an orderly takeover at the time of termination of the contract, regardless of the reason for such termination. Such services include, but are not limited to: (i) providing all files in the format defined by the City; (ii) providing all intermediate materials in a format defined by the City; (iii) providing all supplies and other property of the City. Charges for such assistance will be the lower of (a) those in effect for the services of the personnel required at the time the assistance is required; or (b) those in effect on the date of this Agreement for such personnel, plus [amount of percent]% per year for each year between the date of the Agreement and the date of termination.
- H. Rights and Remedies Not Exclusive.** The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

4. ACCEPTANCE

The City shall have [sixty (60) days] days beginning the date of Software installation to acceptance test the Software (the Acceptance Period). The City may return the Software for any reason within the Acceptance Period and the City shall have no further liability to Licensor under this Agreement. At the end of the acceptance test, the City shall notify Licensor whether it will accept or reject the Software. Should the City decide to keep the Software, the City shall be invoiced for the Software. Should the City decide to return the Software, the City shall discontinue using the Software and will return the Software to Licensor and will delete any and all copies from its computer libraries. If, at the end of the Acceptance Period, the City fails to notify Licensor of its acceptance or rejection of the Software, the Software shall be deemed accepted by the City.

6. SCOPE OF WORK

The Licensor shall perform the services listed in Attachments A (Request for Proposals) and B (Licensor's Response to Request for Proposals).

7. PAYMENT FOR SERVICES

- A. Amount.** The City shall pay the Licensor for completion of the Work in accordance with Attachment B (Licensor's Response to Request for Proposals) [or as follows: _____].

Licensor agrees to accept this payment as full compensation for performance of all services and expenses incurred under this Agreement.

- B. Payment Schedule.** The City shall pay the Licensor in the manner and at such times as set forth in the Agreement Documents [or as follows: _____]. The City seeks to make payment within thirty days of receipt of an invoice and any backup documentation requested under subsection D (Invoice) below.

- C. Maximum Limiting Amount.** The total amount that may be paid to the Licensor for all services and expenses under this Agreement shall not exceed the maximum limiting amount of \$[_____]. The City shall not be liable to Licensor for any amount exceeding the maximum limiting amount without duly authorized written approval.

- D. Invoice.** Licensor shall submit one copy of each invoice, including rates and a detailed breakdown by task for each individual providing services, and backup documentation for any equipment or other expenses to the following:

[Name, address, phone, email]

The City reserves the right to request supplemental information prior to payment. Licensor shall not be entitled to payment under this Agreement without providing sufficient backup documentation satisfactory to the City.

- E. Taxes.** In addition to the license charge, the City shall pay all sales, use and related taxes which Licensor is legally obligated to collect. Licensor shall be liable for all other taxes including taxes based on the net income of Licensor. All taxes due by the City hereunder shall become due and payable when billed by Licensor to the City, or when assessed, levied, or billed by the appropriate taxing authority, even though such billing shall occur subsequent to expiration or termination of this Agreement.

8. WARRANTY AND MAINTENANCE

- A. Warranty.** For a period of [number of days/months/years] from the Effective Date (the

Software Warranty Period) Licensor shall provide the City, at no charge: (i) such assistance as is necessary to correct any Material Nonconformance discovered by the City; and (ii) Maintenance Service, per § 8.B. “Material Nonconformance” means any nonconformance which prevents the Software from providing the functionality described by its documentation and Licensor’s written representations which the City in its reasonable discretion requires.

B. Maintenance. Following the Software Warranty Period, the City shall have the right to purchase Maintenance Service. The first years paid Maintenance Service fee shall be \$[dollar amount]. Annually, the City shall have the option to renew the Maintenance Service, however, the renewal fee may not increase by more than [amount of percent]% over the prior year’s fee. Licensor may withdraw Maintenance Service provided Licensor withdraws the service from all licensees of the Software. For purposes of this Section, Maintenance Service shall be defined to be (i) all Revisions, Updates, and Enhancements to the Software which are made generally available to other licensees of the Software at no cost or as a paid maintenance service; (ii) [number of hours] hours per day telephone technical support; (iii) updated software as required to operate under new releases of the operating system or other technical software required to execute the Software. The words “Revisions,” “Updates,” or “Enhancements” shall be defined as error corrections, modifications and all changes and/or improvements to the Software that relate to operating performance but do not alter the basic function of the Software.

9. NEW VERSION

Should Licensor supply a New Version of the Software, the City shall have the option to upgrade to the New Version Software. Provided the New Version Software is not supplied under the Maintenance Plan per § 6.B., the amount charged the City shall not exceed the lowest amount charged any other licensee of the same Software for the New Version Software upgrade. The words “New Version” shall be defined to mean the Software has been significantly enhanced and extended through the addition of substantial new capabilities.

10. SECTION & ATTACHMENT HEADINGS

The article and attachment headings throughout this Agreement are for the convenience of City and Licensor and are not intended nor shall they be used to construe the intent of this Agreement or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.

11. AGREEMENT DOCUMENTS & ORDER OF PRECEDENT

A. Agreement Documents. The Agreement Documents are hereby adopted, incorporated by reference, and made part of this Agreement. The intention of the Agreement Documents is to establish the necessary terms, conditions, labor, materials, equipment, and other items necessary for the proper execution and completion of the Work to ensure the intended results.

The following documents constitute the Agreement Documents:

Attachment A: Request for Proposals dated [REDACTED]

Attachment B: Licensor's Response to Request for Proposals dated [REDACTED]

Attachment C: Burlington Standard Agreement Conditions for Licensors

Attachment D: Burlington Livable Wage Ordinance Certification

Attachment E: Burlington Outsourcing Ordinance Certification

Attachment F: Burlington Union Deterrence Ordinance Certification

Attachment G: Licensor's Certificate of Insurance

B. Order of Precedent. To the extent a conflict or inconsistency exists between the Agreement Documents, or provisions therein, then the Agreement take precedent. Any Invitation for Bids, Additional Agreement Provisions, and the City Ordinance Certifications shall prevail over any inconsistency with the Licensor's Scope of Work and Cost Proposal.

12. [Reserved]

— Signatures follow on the next page —

SIGNATURE

Persons signing for the Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect.

Licensor
[Name of Licensor]

By: _____

Date: _____

City of Burlington
[Department]

By: _____
[Name]
[Title]

Date: _____

Attachment A:
Request for Proposals dated [REDACTED]

DRAFT

**Attachment B:
Licensor's Response to Request for Proposals dated [REDACTED]**

DRAFT

**Attachment C:
Burlington Standard Agreement Conditions For Licensors**

DRAFT

**Attachment D:
Burlington Livable Wage Ordinance Certification**

DRAFT

**Attachment E:
Burlington Outsourcing Ordinance Certification**

DRAFT

**Attachment F:
Burlington Union Deterrence Ordinance Certification**

DRAFT

**Attachment G:
Licensor's Certificate of Insurance**

DRAFT

**ATTACHMENT C:
BURLINGTON STANDARD AGREEMENT CONDITIONS FOR LICENSORS**

1. **REGISTRATION:** The Licensor 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 Agreement is effective. This registration must be complete prior to Agreement execution.

2. **INSURANCE:** Prior to beginning any work, the Licensor shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the City. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the Effective Date of the Agreement. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. If this Agreement extends to more than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Copies of any insurance policies may be required. Each policy (with the exception of professional liability and worker's compensation) shall name the City as an additional insured for the possible liabilities resulting from the Licensor's actions or omissions. The liability insurance furnished by the Licensor is primary and non-contributory for all the additional insured.

The Licensor is responsible to verify and confirm in writing to the City that: (i) all sub-Licensors must comply with the same insurance requirements as the Licensor; (ii) all coverage shall include adequate protection for activities involving hazardous materials; and (iii) all work activities related to the Agreement shall meet minimum coverage and limits.

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

A. General Liability And Property Damage: With respect to all operations performed by the Licensor, sub-Licensors, agents or workers, it is the Licensor's responsibility to ensure that general liability insurance coverage, on an occurrence form, provides all major divisions of coverage including, but not limited to:

1. Premises Operations
2. Independent Licensors'/Consultants' Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Medical Expenses

Coverage limits shall not be less than:

- | | |
|----------------------------------|-------------|
| 1. General Aggregate | \$2,000,000 |
| 2. Products-Completed/Operations | \$2,000,000 |

3.	Personal & Advertising Injury	\$1,000,000
4.	Each Occurrence	\$1,000,000
5.	Damage to Rented Premises	\$ 250,000
6.	Med. Expense (Any one person)	\$ 5,000

B. Workers' Compensation: With respect to all operations performed, the Licensor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont and ensure that all sub-Licensors carry the same workers' compensation insurance for all work performed by them under this Agreement. Minimum limits for Employer's Liability:

1. Bodily Injury by Accident: \$500,000 each accident
2. Bodily Injury by Disease: \$500,000 policy limit,
\$500,000 each employee

C. Professional Liability Insurance:

1. General: The Consultant/Licensor shall carry appropriate professional liability insurance covering errors and omissions made during their performance of Agreement duties with the following minimum limits:

(a) \$3,000,000 - Annual Aggregate

(b) \$2,000,000 - Per Occurrence

2. Deductibles: The Licensor is responsible for any and all deductibles.
3. Coverage: Prior to performing any work, the Licensor shall provide evidence of professional liability insurance coverage defined under this section. In addition, the Licensor shall maintain continuous professional liability coverage for the period of the Agreement and for a period of five years following substantial completion of construction.

D. Automobile Liability: The Licensor 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.

E. Valuable Papers And Records Insurance: The Licensor 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 information or data relating to the work, whether supplied by the City or developed by the Licensor, sub-Licensor, worker, or agent, in the event of loss, impairment, or destruction. Such coverage shall remain in force until the final plans as well as all related materials have been delivered by the Licensor to, and accepted by, the City. Unless otherwise provided, Valuable Papers and Records Insurance shall provide coverage on an "individual occurrence" basis with limits in the amount of

one hundred and fifty thousand dollars (\$150,000) when the insured items are in the Licensor's possession, and in the amount of forty thousand dollars (\$40,000) regardless of the physical location of the insured items.

F. Umbrella Liability:

1. \$1,000,000 Each Event Limit
2. \$1,000,000 General Aggregate Limit
3. **CONFLICT OF INTEREST:** The Licensor shall disclose in writing to the City any actual or potential conflicts of interest or any appearance of a conflict of interest by the Licensor, its employees or agents, or its sub-Licensors, if any.
4. **PERFORMANCE:** Licensor warrants that performance of Work will conform to the requirements of this Agreement. Licensor shall use that degree of ordinary care and reasonable diligence that an experienced and qualified provider of similar services would use acting in like circumstances and experience in such matters and in accordance with the standards, practices and procedures established by Licensor for its own business.
5. **DUTY TO INFORM CITY OF AGREEMENT DOCUMENT ERRORS:** If Licensor knows, or has reasonable cause to believe, that a clearly identifiable error or omission exists in the Agreement Documents, including but not limited to unit prices and rate calculations, Licensor shall immediately give the City written notice thereof. Licensor shall not cause or permit any Work to be conducted which may relate to the error or omission without first receiving written notice by the City that City representatives understand the possible error or omission and have approved of modifications to the Agreement Documents or that Licensor may proceed without any modification being made to Agreement Documents.
6. **NON-APPROPRIATION:** The obligations of the City under this Agreement are subject to annual appropriation by the Burlington City Council. If no funds or insufficient funds are appropriated or budgeted to support continuation of payments due under this Agreement, the Agreement shall terminate automatically on the first day of the fiscal year for which funds have not been appropriated. The Parties understand and agree that the obligations of the City to make payments under this Agreement shall constitute a current expense of the City and shall not be construed to be a debt or a pledge of the credit of the City. The decision whether or not to budget and appropriate funds during each fiscal year of the City is within the discretion of the Mayor and City Council of the City. The City shall deliver written notice to Licensor as soon as practicable of any non-appropriation, and Agreement Licensor shall not be entitled to any payment or compensation of any kind for work performed after the City has delivered written notice of non-appropriation.
7. **CHANGES AND AMENDMENTS:** No changes or amendments to the Work of the Agreement shall be effective unless documented in writing and signed by authorized

representatives of the City and the Licensor.

- 8. FORCE MAJEURE:** Neither Party to this Agreement shall be liable to the other for any failure or delay of performance of any obligation under this Agreement to the extent the failure or delay is caused by acts of God, public health emergencies, epidemics, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control (“Force Majeure”). To assert Force Majeure, the nonperforming party must prove that a) it made all reasonable efforts to remove, eliminate, or minimize the cause of delay or damage, b) diligently pursued performance of its obligations, c) substantially fulfilled all obligations that could be fulfilled, and d) timely notified the other part of the likelihood or actual occurrence of a Force Majeure event. If 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. The suspension of any obligations under this section shall not cause the term of this Agreement to be extended and shall not affect any rights accrued under this Agreement prior to the occurrence of the Force Majeure. The Party giving notice of the Force Majeure shall also give notice of its cessation.
- 9. PROPRIETARY RIGHTS:** The Parties under the Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work performed by the Licensors under the Agreement, all rights accruing from such discoveries or inventions shall be the sole property of the Licensor. The Licensor, however, agrees to and does hereby grant to the City an irrevocable, nonexclusive, non-transferable, and royalty-free license to the manufacture, use, and disposition of any discovery or invention that may be developed as a part of the Work under the Agreement.
- 10. PUBLIC RECORDS:** The Licensor understands that any and all records related to and acquired by the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City. The Licensor shall identify all records that it considers to be trade secrets as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act and shall also identify all other records it considers to be exempt under the Act. It is not sufficient to merely state generally that the record is proprietary or a trade secret or is otherwise exempt. Particular records, pages or section which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.
- 11. AGREEMENT DISPUTES:** In the event of a dispute between the parties to this Agreement each party will continue to perform its obligations unless the Agreement is terminated in accordance with these terms.
- 12. GENERAL COMPLIANCE WITH LAWS:** The Licensor and any sub-Licensor approved under this Agreement 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.

- 13. CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Agreement, the Licensor will not discriminate against any employee or applicant for employment because of religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status, or genetic information. Licensor, and any sub-Licensors, shall comply with any Federal, State, or local law, statute, regulation, Executive Order, or rule that applies to it or the services to be provided under this Agreement concerning equal employment, fair employment practices, affirmative action, or prohibitions on discrimination or harassment in employment.
- 14. CHILD SUPPORT PAYMENTS:** By signing the Agreement, the Licensor certifies, as of the date of signing the Agreement, that the Licensor (a) is 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 Licensor is a sole proprietorship, the Licensor's statement applies only to the proprietor. If the Licensor is a partnership, the Licensor's statement applies to all general partners with a permanent residence in Vermont. If the Licensor is a corporation, this provision does not apply.
- 15. TAX REQUIREMENTS:** By signing the Agreement, the Licensor certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, that the Licensor 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.

16. INDEMNIFICATION

- A. Proprietary Rights Infringement.** Licensor warrants Licensor has the right to license the Software and grant the rights granted herein and will indemnify and hold the City and its subsidiaries, subsidiaries of subsidiaries and affiliated companies and employees and agents of each harmless from all loss, cost, liability and expenses, including actual attorney's fees, arising out of any claim the Software used within the scope of this Agreement infringes any patent, copyright, trade secret or other proprietary right of any third party. Should any of the Software herein become or in Licensor's opinion be likely to become subject to such claim, the City will permit Licensor, at its option and expense to (i) procure for the City the right to continue to use such Software or (ii) modify the Software so that it becomes noninfringing.

B. Authorization Codes. Licensor warrants that the Software licensed hereunder contains no authorization codes, computer viruses or other contaminants, including any codes or instructions that can access, modify, damage or disable the City's computer systems ("Authorization Codes"), and Licensor shall indemnify and hold the City harmless from any loss, cost, or liability, including actual attorney's fees, arising from a breach of this warranty or the presence of such Authorization Codes in the Product.

17. LIMITATIONS OF LIABILITIES

LICENSOR'S ENTIRE LIABILITY WITH RESPECT TO THE SOFTWARE, SHALL BE AS SET FORTH HEREIN. LICENSOR SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, EXPENSES, OR LOST PROFITS, LOST SAVINGS OR OTHER DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. However this limitation of liability shall not be applicable to Licensor's responsibilities per § 10, Indemnification.

No action, regardless of form, arising out of any transaction under this Agreement may be brought by either party more than **[one (1)]** year after the injured party has actual knowledge of the occurrence which gives rise to the cause of such action.

18. NO GIFTS OR GRATUITIES: The Licensor shall not make any payment or gift or donation of substantial value to any elected official, officer, employee, or agent of the City during the term of this Agreement.

19. ASSIGNMENT: Licensor shall not sublet or assign this Work, or any part of it, without the written consent of the City. If any sub-Licensor is approved, Licensor shall be responsible and liable for all acts or omissions of that sub-Licensor for any Work performed. If any sub-Licensor is approved, Licensor shall be responsible to ensure that the sub-Licensor is paid as agreed and that no lien is placed on any City property.

20. TRANSFERS, SUBLETTING, ETC: The Licensor shall not assign, sublet, or transfer any interest in the work, covered by this Agreement, without prior written consent of the City, and further, if any sub-Licensor 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 Licensor of responsibility for the performance of that portion of the work so transferred. The form of the sub-Licensor's Agreement shall be as developed by the Licensor and approved by the City. The Licensor shall ensure that insurance coverage exists for any operations to be performed by any sub-Licensor as specified in the insurance requirements section of this Agreement.

The services of the Licensor, to be performed under the Agreement, shall not be transferred without written authorization of the City. Any authorized sub-Agreements shall contain all of the same provisions contained in and attached to the original Agreement with the City.

21. CONTINUING OBLIGATIONS: The Licensor agrees that if because of death, disability, or other occurrences, it becomes impossible to effectively perform its services in compliance with the Agreement, neither the Licensor nor its surviving members shall be relieved of their obligations to complete the Agreement unless the City agrees to terminate the Agreement because it determines that the Licensor is unable to satisfactorily execute the Agreement.

22. INTERPRETATION & IMPLEMENTATION: 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.

23. ARM'S LENGTH: This Agreement has been negotiated at arm's length, and any ambiguity in any of its terms or provisions shall be interpreted in accordance with the intent of the Parties and not against or in favor of either the City or Licensor.

24. RELATIONSHIP: The Licensor is an independent contractor and shall act in an independent capacity and not as officers or employees of the City. To that end, the Licensor shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Licensor shall provide its own tools, materials, or equipment. The Parties agree that neither the Licensor nor its principal(s) or employees are entitled to any employee benefits from the City. Licensor understands and agrees that it and its principal(s) or employees have no right to claim any benefits under the Burlington Employee Retirement System, the City's worker's compensation benefits, health insurance, dental insurance, life insurance, or any other employee benefit plan offered by the City. The Licensor agrees to execute any certifications or other documents and provide any certificates of insurance required by the City and understands that this Agreement is conditioned on its doing so, if requested.

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

25. CHOICE OF LAW: Vermont law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision rendered null and void by operation of this provision shall not invalidate the remainder of this Agreement to the extent capable of execution.

26. JURISDICTION: All suits or actions related to this Agreement shall be filed and proceedings held in the State of Vermont.

- 27. BINDING EFFECT AND CONTINUITY:** This Agreement shall be binding upon and shall inure to the benefit of the Parties, their' respective heirs, successors, representatives, and assigns. If a dispute arises between the Parties, each Party will continue to perform its obligations under this Agreement during the resolution of the dispute, until the Agreement is terminated in accordance with its terms.
- 28. SEVERABILITY:** The invalidity or unenforceability of any provision of this Agreement, shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.
- 29. ENTIRE AGREEMENT & AGREEMENT:** This Agreement constitutes the entire Agreement, agreement, and understanding of the Parties with respect to the subject matter of this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.
- 30. APPENDICES:** The City may attach to these conditions appendices containing various forms and typical sample sheets for guidance and assistance to the Licensor 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 Licensor to ensure that they have the latest versions applicable to the Agreement.
- 31. NO THIRD PARTY BENEFICIARIES:** This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.
- 32. WAIVER:** A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

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

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

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

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

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

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

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

Date _____ By: Contractor _____

Subscribed and sworn to before me:

Date _____ Notary _____

ARTICLE VI. LIVABLE WAGES¹

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 employees have an opportunity for a decent quality of life and are compensated such that they are not dependent on public assistance to meet their basic needs;
- (c) The City of Burlington is committed, through its contracts with vendors and provision of financial assistance, to encourage the private sector to pay its employees a livable wage and contribute to employee health care benefits;
- (d) The creation of jobs that pay livable wages promotes the prosperity and general welfare of the City of Burlington and its residents, increases consumer spending with local businesses, improves the economic welfare and security of affected employees and reduces expenditures for public assistance;
- (e) It is the intention of the city council in passing this article to provide a minimum level of compensation for employees of the City of Burlington and employees of entities that enter into service contracts or receive financial assistance from the City of Burlington.

(Ord. of 11-19-01; Ord. of 10-21-13)

21-81 Definitions.

As used in this article, the following terms shall be defined as follows:

- (a) *Contractor or vendor* is a person or entity that has a service contract with the City of Burlington where the total amount of the service contract or service contracts exceeds fifteen thousand dollars (\$15,000.00) for any twelve (12) month period, including any subcontractors of such contractor or vendor.
- (b) *Grantee* is a person or entity that is the recipient of financial assistance from the City of Burlington in the form of grants, including any contractors or subgrantees of the grantee, that exceed fifteen thousand dollars (\$15,000.00) for any twelve (12) month period.

(c) *Covered employer* means the City of Burlington, a contractor or vendor or a grantee as defined above. The primary contractor, vendor, or grantee shall be responsible for the compliance of each of its subcontractors (or of each subgrantee) that is a covered employer.

(d) *Covered employee* means an "employee" as defined below, who is employed by a "covered employer," subject to the following:

(1) An employee who is employed by a contractor or vendor is a "covered employee" during the period of time he or she expends on furnishing services under a service contract with the City of Burlington, notwithstanding that the employee may be a temporary or seasonal employee;

(2) An employee who is employed by a grantee who expends at least half of his or her time on activities funded by the City of Burlington is a "covered employee."

(e) *Designated accountability monitor* shall mean a nonprofit corporation which has established and maintains valid nonprofit status under Section [501\(c\)\(3\)](#) of the United States Internal Revenue Code of 1986, as amended, and that is independent of the parties it is monitoring.

(f) *Employee* means a person who is employed on a full-time or part-time regular basis. In addition, commencing with the next fiscal year, a seasonal or temporary employee of the City of Burlington who works ten (10) or more hours per week and has been employed by the City of Burlington for a period of four (4) years shall be considered a covered employee commencing in the fifth year of employment. "Employee" shall not refer to volunteers working without pay or for a nominal stipend, persons working in an approved apprenticeship program, persons who are hired for a prescribed period of six (6) months or less to fulfill the requirements to obtain a professional license as an attorney, persons who are hired through youth employment programs or student workers or interns participating in established educational internship programs.

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

(h) *Livable wage* has the meaning set forth in Section [21-82](#).

(i) *Retaliation* shall mean the denial of any right guaranteed under this article, and any threat, discipline, discharge, demotion, suspension, reduction of hours, or any other adverse action against an employee for exercising any right guaranteed under this article. Retaliation shall also include coercion, intimidation, threat, harassment, or interference in any manner with any investigation, proceeding, or hearing under this article.

(j) *Service contract* means a contract primarily for the furnishing of services to the City of Burlington (as opposed to the purchasing or leasing of goods or property). A contract involving the furnishing of financial products, insurance products, or software, even if that contract also includes some support or other services related to the provision of the products, shall not be considered a service contract.

(Ord. of 11-19-01; Ord. of 10-21-13)

21-82 Livable wages required.

(a) Every covered employer shall pay each and every covered employee at least a livable wage no less than:

(1) For a covered employer that provides employer-assisted health care, the livable wage shall be at least fifteen dollars and thirty-five cents (\$15.35) per hour on the effective date of the amendments to this article.

(2) For a covered employer that does not provide employer-assisted health care, the livable wage shall be at least sixteen dollars and seventy-four cents (\$16.74) per hour on the effective date of the amendments to this article.

(3) Covered employees whose wage compensation consists of more or other than hourly wages, including, but not limited to, tips, commissions, flat fees or bonuses, shall be paid so that the total of all wage 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 1 of each year based upon a report of the Joint Fiscal Office of the State of Vermont that describes the basic needs budget for a single person but utilizes a model of two (2) adults residing in a two (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. The livable wage rates derived from utilizing a model of two (2) adults residing in a two (2) bedroom living unit in an urban area with a moderate cost food plan shall not become effective until rates meet or exceed the 2010 posted livable wage rates. Prior to May 1 preceding any such adjustment and prior to

May 1 of each calendar year thereafter, the chief administrative officer will provide public notice of this adjustment by posting a written notice in a prominent place in City Hall by sending written notice to the city council and, in the case of covered employers that have requested individual notice and provided contact information to the chief administrative officer, by notice to each such covered employer. However, once a livable wage is applied to an individual employee, no reduction in that employee's pay rate is permissible due to this annual adjustment.

(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, personal, or combined time off leave.

(Ord. of 11-19-01; Ord. of 5-2-11; Ord. of 6-13-11; Ord. of 10-21-13)

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. 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 funds awarded by the City of Burlington are being expended by the covered employer.

(Ord. of 11-19-01; Ord. of 10-21-13)

21-84 Enforcement.

(a) Each service contract or grant covered by this article shall contain provisions requiring that the covered employer or grantee submit a written certification, under oath, during each year during the term of the service contract or grant, that the covered employer or grantee (including all of its subcontractors and subgrantees, if any) is in compliance with this article. The failure of a contract to contain such provisions does not excuse a covered employer from its obligations under this article. The 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 covered employer shall agree to provide payroll records or other documentation for itself and any subcontractors or subgrantees, as deemed necessary by the chief

administrative officer of the City of Burlington, within ten (10) business days from receipt of the City of Burlington's request.

(b) The chief administrative officer of the City of Burlington may require that a covered employer submit proof of compliance with this article at any time, including but not limited to:

- (1) Verification of an individual employee's compensation;
- (2) Production of payroll, health insurance enrollment records, or other relevant documentation; or
- (3) Evidence of proper posting of notice.

If a covered employer is not able to provide that information within ten (10) business days of the request, the chief administrative officer may turn the matter over to the city attorney's office for further enforcement proceedings.

(c) The City of Burlington shall appoint a designated accountability monitor that shall have the authority:

- (1) To inform and educate employees of all applicable provisions of this article and other applicable laws, codes, and regulations;
- (2) To create a telephonic and electronic accountability system under this article that shall be available at all times to receive complaints under this article;
- (3) To establish and implement a system for processing employees' complaints under this article, including a system for investigating complaints and determining their initial credibility; and
- (4) To refer credible complaints to the city attorney's office for potential enforcement action under this article.

The designated accountability monitor shall forward to the City of Burlington all credible complaints of violations within ten (10) days of their receipt.

(d) Any covered employee who believes his or her covered employer is not complying with this article may file a complaint in writing with the city attorney's office within one (1) year after the alleged violation. The city attorney's office shall conduct an investigation of the complaint, during which it may require from the covered employer evidence such as may be required to determine whether the covered employer has been compliant, and shall make a finding of compliance or noncompliance within a reasonable time after receiving the

complaint. Prior to ordering any penalty provided in subsection (e), (f), or (g) of this section, the city attorney's office shall give notice to the covered employer. The covered employer may request a hearing within thirty (30) days of receipt of such notice. The hearing shall be conducted by a hearing officer appointed by the city attorney's office, who shall affirm or reverse the finding or the penalty based upon evidence presented by the city attorney's office and the covered employer.

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

(f) 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.

(g) A violation of this article shall be a civil offense subject to a civil penalty of from two hundred dollars (\$200.00) to five hundred dollars (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any covered employee is not compensated as required by this article shall constitute a separate violation.

(h) If a complaint is received that implicates any City of Burlington employee in a possible violation of this article, that complaint will be handled through the City's personnel procedures, not through the process outlined in this article.

(i) Any covered employee aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against the covered employer within two (2) years after discovery of the alleged violation. The court may award any covered employee who files suit pursuant to this section, as to the relevant period of time, the following:

(1) The difference between the livable wage required under this article and the amount actually paid to the covered employee;

(2) Equitable payment for any compensated days off that were unlawfully denied or were not properly compensated;

(3) Liquidated damages in an amount equal to the amount of back wages and/or compensated days off unlawfully withheld or fifty dollars (\$50.00) for each employee or person whose rights under this article were violated for each day that the violation occurred or continued, whichever is greater;

(4) Reinstatement in employment and/or injunctive relief; and

(5) Reasonable attorneys' fees and costs.

(j) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article. No person shall engage in retaliation against an employee or threaten to do so because such employee has exercised rights or is planning to exercise rights protected under this article or has cooperated in any investigation conducted pursuant to this article.

(Ord. of 11-19-01; Ord. of 2-17-04; Ord. of 5-2-11; Ord. of 10-21-13)

21-85 Other provisions.

(a) No 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 subsection shall be deemed a violation of this article subject to the remedies of Section [21-84](#).

(b) No covered employer with a current contract, as of the effective date of this provision, with the City of Burlington for the use of property located at the Burlington International Airport may reduce, during the term of that contract, the wages of a covered employee below the livable wage as a result of amendments to this article.

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

(d) Notwithstanding subsection (c) of this section, 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.

(e) 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.

(f) 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; Ord. of 10-21-13)

21-86 Exemptions.

An exemption from any requirement of this article may be requested for a period not to exceed two (2) years:

- (a) By a covered employer where payment of the livable wage would cause substantial economic hardship;
and
- (b) By the City of Burlington where application of this article to a particular contract or grant is found to violate specific state or federal statutory, regulatory or constitutional provisions or where granting the exemption would be in the best interests of the City.

A covered employer or grantee granted an exemption under this section may reapply for an exemption upon the expiration of the exemption. Requests for exemption may be granted by majority vote of the city council. All requests for exemption shall be submitted to the chief administrative officer. The finance committee of the City of Burlington shall first consider such request and make a recommendation to the city council. The decision of the city council shall be final.

(Ord. of 11-19-01; Ord. of 10-21-13)

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; Ord. of 10-21-13)

21-88 Annual reporting.

On or before April 15 of each year, the city attorney's office shall submit a report to the city council that provides the following information:

- (a) A list of all covered employers broken down by department;
- (b) A list of all covered employers whose service contract did not contain the language required by this article;
and
- (c) All complaints filed and investigated by the city attorney's office and the results of such investigation.

(Ord. of 10-21-13)

21-89 Effective date.

The amendments to this article shall take effect on January 1, 2014, and shall not be retroactively applied.

(Ord. of 10-21-13)

Certification of Compliance with the City of Burlington's Outsourcing 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 Outsourcing Ordinance (Ordinance §§ 21-90 – 21-93); (2) as a condition of entering into this contract or grant, Contractor confirms that the services provided under the above-referenced contract will be performed in the United States or Canada.

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

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary

ARTICLE VII. OUTSOURCING

21-90 Policy.

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)

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)

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)

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)

21-94 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 outsources work on a government funded project shall be deemed to be in violation of this article.

(b) A violation of this article shall be a civil offense subject to a civil penalty of from one hundred dollars (\$100.00) to five hundred (\$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 violation of any provision of this article shall continue shall constitute a separate violation.

(c) 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 11-21-05/12-21-05)

21-95—21-99 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

ARTICLE VIII. UNION DETERRENCE

21-100 Policy.

It is the policy of the City of Burlington to limit letting contracts to organizations that provide union deterrence services to other companies.

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

21-101 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 fifteen thousand dollars (\$15,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.

(c) *Union deterrence services.* Services provided by a contractor, subcontractor or vendor that are not restricted to advice concerning what activities by an employer are prohibited and permitted by applicable laws and regulations, but extend beyond such legal advice to encouraging an employer to do any of the following:

- 1) Hold captive audience, (i.e., mandatory) meetings with employees encouraging employees to vote against the union;
- 2) Have supervisors force workers to meet individually with them to discuss the union;
- 3) Imply to employees, whether through written or oral communication, that their employer may have to shut down or lay people off if the union wins the election;
- 4) Discipline or fire workers for union activity;
- 5) Train managers on how to dissuade employees from supporting the union.

(d) *Substantial portion of income.* For the purposes of this article, substantial portion of income shall mean greater than ten (10) percent of annual gross revenues or one hundred thousand dollars (\$100,000.00), whichever is less.

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

21-102 Implementation.

- (a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who
- 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)

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)

21-104—21-110 Reserved.
