

CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS
WATER RESOURCES DIVISION

REQUEST FOR PROPOSALS

Issued: April 12, 2023

Questions due: April 26, 2023

Responses to Questions provided: May 2, 2023

Proposals Due: May 12, 2023

I. PROJECT BACKGROUND

The City of Burlington Department of Public Works Water Resources Division (WRD) provides drinking water, wastewater and stormwater services to a community of approximately 42,000 inhabitants and almost 10,000 connections. The City has begun implementation of AMI with the installation of the WRD's first AMI collector in 2022 as part of a pilot project with a key customer interested in acquiring real time water use data.

The WRD uses Neptune meters throughout the City and has recently upgraded to N360. The WRD currently offers an online bill viewing portal through MyGov Hub with bill payments through MuniPAY. The WRD uses Flexibill (part of the Spectrum suite of software solutions at Harris Local Government) as the CIS and also uses Harris for print to mail services.

While the WRD does intend to expand the AMI network, the number of AMI eligible customers to date represents 20% of accounts given that the majority of the radio boxes are not V4 (AMI compatible).

WRD bills for drinking water, wastewater and stormwater services. Both water and wastewater have a fixed fee (based on meter size) and volumetric portion of the rate. The volumetric rate varies by customer class for the water bill. Additionally, WRD charges a monthly private fire protection charge. Stormwater is charged either based on a flat fee for single family, duplex or triplex customers or a direct assessment for remaining customers. See bit.ly/FY23Rates for WRD's current rate structure.

The WRD is seeking a full services customer engagement system software that provides integration with water meter data and related metrics for both AMR and AMI customers, as feasible based on a customer's metering technology.

II. SCOPE OF WORK

The WRD is seeking proposals for a vendor to provide a customer-facing web-based application, a utility-facing web-based analytics dashboard, and the ability to send a range of automatic digital alerts and notifications. The proposed portal must be able to receive and display the WRD's consumption data, which is reported at an hourly rate of usage for AMI customers and monthly for AMR customers as well

as monthly customer bills. The Vendor will provide a secure interface to present the customer with consumption information in months, days, and hours (as applicable based on their AMI or AMR status); leak detection assistance (AMI only); service interruption notification; and water efficiency options. The portal, at a minimum, would also support a single sign-in link to MuniPAY option (current platform) or other online payment service, other links to leak detection videos, and the WRD website. The WRD will be able to send service interruption notifications, view customer pages for support, and view analytics. The preferred customer portal offering would be a SaaS hosted solution with stated SLA metrics for up-time availability and support. It is understood that some of the items in the Scope of Work are only available for AMI customers and that there will be less functionality for AMR customers.

The RFP response will provide detailed information on the proposer's ability to:

1. Provide a customer facing portal that is available online and through a mobile interface for residential, multi-family, commercial, industrial, and irrigation accounts that provides:

1.1 Registration and Basic Information

- a) Secure registration and login for each utility account regardless of meter type or the granularity of the meter data.
- b) Ability to configure the home page based on WRD priorities.
- c) Ability to add items to the Home Page based on common customer requests.
- d) Ability to communicate AMI data interruptions to customers through their data feed to decrease the number of customer calls.
- e) Dynamic customer profile that customers can update 24x7 to personalize their portal and recommendations.
- f) Provide customers the ability to enter information about home size, square footage, number of persons in the home and other useful information in comparing water usage of similar properties.
- g) Ability to display bill information related to Water, Wastewater and Stormwater portions of the bill.

1.2 Notifications and Alerts

- a) Easily customizable communication preference – customers will be able to determine how they receive outgoing communications including by text/SMS, email, automated call and mail.
- b) Account management module to set communication preferences for alerts and the ability to automatically notify the customer of suspected leaks, engage the customer to investigate and resolve the leak with step-by-step instructions and resources, and provide resolution details to WRD through the dashboard.
- c) Ability to allow the customer to define consumption alert thresholds and receive an alert when

the usage is approaching the threshold (such as a rate tier).

- d) Ability to view dynamic, personalized information on why a bill might be high and what can be done to reduce future consumption.

1.3 Personalized Data and Insights

- a) Personalized consumption displays in gallons per day, seasonal consumption trends, year-over-year usage, and the ability to compare usage to goals. Residential accounts shall include water use consumption comparisons to similar households based on occupancy and outdoor area characteristics and residential end-use disaggregation.
- b) Disaggregated water consumption estimates for indoor and outdoor usage.
- c) Display water consumption data in context of temperature and precipitation data to inform user of how weather impacts water use.
- d) Ability to view water consumption by rate tiers and to forecast end-of-period total consumption levels.
- e) Ability to view current and prior consumption relative to a customer determined water budget, consumption goal, or usage allocation.
- f) The ability to differentiate between actual consumption, estimated data, and missing data (missed meter reads).
- g) Ability to estimate and display irrigation events in the consumption graph view.
- h) Interactive money-saving recommendation library, customized for each account profile and configurable by WRD with step-by-step implementation instructions, informational links and videos, dynamic estimates of savings potential in gallons per day and dollars per year, and the ability to sign up for and keep track of money saving activities. Library will highlight and rotate most relevant savings actions for customers based on the customer's profile and the season.
- i) Ability to indicate on the web portal which programs and rates the customer is currently participating in (i.e. tiered program, fixed fee low income, senior or affordable housing waiver). Provide links to applicable affordability programs.

1.4 Multiple Users and Accounts

- a) Users or managers of multiple properties or commercial properties with multiple meters can view individual meters or a roll-up of all property consumption data in a unified view, including compound meter usage.
- b) Ability to give access (create a secondary account login) for other users such as a spouse, roommate, owner, tenant, or property manager.
- c) Deliver relevant and timely utility-specific news or resources.
- d) Ability to export consumption data into standard data display format (i.e. csv file).

1.5 Billing and Payments

- a) Ability to provide an eBilling solution that notifies customer and provides a visualization of the bill on the portal. Solutions can include, but are not limited to, display of the pdf version of the bills that are sent to WRDs print to mail vendor or direct display of uploaded data from the WRD CIS via the software solution.
- b) Ability to offer a link to the portal from the City website.
- c) Ability to integrate with the City's payment system vendor. The current payment system provider is MunicipAY. Company information for Municipay is available at www.municipay.com. The proposed solution should be able to integrate with any commercially available payment providers.

2. Provide an analytical dashboard with data from all meter classes that provides:

2.1 Data and Access

- a) The ability to store and display at least 5 years of AMI and AMR data for immediate real-time access in both the reporting engine and the customer presentment interface.
- b) Ability to export data in standard data presentment format (i.e. csv).
- c) Unlimited licenses for WRD staff and the ability for a Utility administrator to provision or revoke access with viewer, editor, or administrator roles.
- d) Consumption analytics across all meters, regardless of meter type.
- e) Profiles for each account with the ability to search for a profile by partial or complete account number, meter number, customer name, address, or email address.
- f) Ability to record communications with each account and the capability to send an email with relevant data and charts to an individual customer through their profile page.
- g) AMI data in the profile will be displayed and color-coded based on normal usage, suspected leaks, and suspected irrigation.
- h) Ability for customer usage analysis; including seasonal use analysis, temperature and precipitation information, and the ability to load the customer's view of their portal in impersonation mode.

2.2 Reports and Modules

- a) Reports and maps showing top consumers by meter class and by the period with the ability to download consumption into Excel for further analysis.
- b) Group multiple meters (e.g. domestic and irrigation and also compound meter heads) associated with one master account.
- c) Reports on customer portal use and customer profile statistics, including frequency of portal use, most popular actions taken by customers, method of visit (mobile vs desktop).
- d) Leak detection module that detects and defines types of leak events with thresholds that can be

configured by WRD.

- e) Leak status report that provides an estimate of leak start date, duration of leak, volume of water lost during leak, whether or not customer has been notified, what actions the customer has taken to resolve, and information on the resolution.
- f) Messaging module to allow WRD staff to mass customize customer communications over email, text, and automated voice.
- g) List generator feature by meter or account number, polygon selected map interface, or external csv file upload.
- h) Irrigation detection module that detects daily irrigation events at individual properties.

2.3 Messaging and Communications

- a) Ability to compose, send, and track messages to segments of customers within Dashboard.
- b) Ability to create segments of customers based on drawing shape over map of accounts with service area.
- c) Ability to create segments of customers based on popular reports.
- d) Ability to support multiple communication channels, including SMS and automated voice calling.
- e) Ability to create, publish and deactivate customer forms for use internally or by end user through Portal, and manage responses in report view.
- f) Ability to view each customer's up-to-date account balance, water bill, and billing history.
- g) Easy to access and use Help site.

Proposer must provide sample format, design and content of web-based application and functionality in the proposal. Proposer will also provide information on safety and security features of online application.

- 3. Provide the ability to identify certain events and send alerts, including the following capabilities:
 - a) Ability to send any alert through email, SMS, or automated call based on end user preferences.
 - b) Ability to detect irregular usage (possible leak) for domestic and irrigation meters based on thresholds configurable by WRD. Leak detection will be available for hourly (AMI) data and monthly data.
 - c) Digital leak alerts will provide instructions and video content for finding and resolving the source of irregular use, regardless of whether or not the user has ever logged into the customer portal.
 - d) Option to send automated Print Leak Alerts to customers with continuous use detected from hourly meter reads when email and telephone numbers are not available.
 - e) Option to allow customers to set their own consumption threshold alert based on usage compared to previous periods.
 - f) Ability to set threshold notifications based on monthly customer cost.
 - g) Ability to view mobile and web based hourly or monthly AMI consumption graphs including the ability to overlay weather data.

- h) Option to allow customer to set their own hourly, daily, or monthly user-defined threshold alert.
- i) Option to allow customer to choose to receive an alert when a bill is available, due, or overdue.

Proposer must provide sample format, design and content of the alerts including screenshots.

4. Provide a convenient option for utility customers to view, pay their bill or reference other City information:
 - a) Possible option for utilizing a single sign on (SSO) between the portal and the City's online payment provider (This is currently MuniPAY, but proposer should be able to provide for single sign-on to other payment platforms). Option will be able to log into the portal and transfer to utility bill payment site without reentering credentials.
 - b) Possible option for providing hyperlinks to the MuniPAY or other City payment site, the City's web site, and any other link that may be applicable.
 - c) Any payment options presented by the proposer must be PCI 3.2 compliant and documented as such via the PCI security standards or affiliated organization.
5. Project Management to detail implementation schedule and proposed costs:
 - a) The proposal will include a staff-training plan to orient city staff to portal components (up to 8 people).
 - b) Provide detail schedule of on-going status updates.
 - c) Organize and attend meetings as required (either in person, by telephone, or web as necessary).
 - d) Designate a staff person to serve as Project Manager.
 - e) Proposer will provide information on their project management experience with projects similar in scope.
 - f) Proposer will provide information on experience of staff assigned to this project.
 - g) Provide a minimum of three references from similar sized municipal projects.
6. Proposer will provide detailed information on how to measure results from using the portal:
 - a) Relevant details will include what information/specifics will be available to WRD related to water savings, customer satisfaction, cost effectiveness, program participation, and any other efficiencies.
 - b) Timelines for the availability and frequency of reporting.
7. Proposer will provide a description of security and privacy controls for all personally identifiable information provided to proposer in service of this project:
 - a) Proposer shall include evidence of information security consistent with industry standards via a written third-party assessment. The assessment shall include evaluation of the external penetration testing and a web application security assessment.

- b) Vendor must encrypt customer data in transit and at rest.
- c) Any WRD or customer data utilized will not be exported outside of the United States. Users can visualize and pay bills and receive alerts, but data downloads should only be given to individuals currently located in the United States.

III. RESPONSE FORMAT

Respondents are requested to structure their responses in four sections as further described under Section IV: Submissions:

- A. Qualifications
- B. Description of Software Solution and Ability to Meet Scope of Work
- C. Implementation Approach
- D. Cost Proposal

Responses should be clear and concise and must contain a defined approach and specifically address the major components of work described in the Scope of Work.

Respondents are responsible for preparation of submission costs. Responses must be submitted electronically in digital format (PDF) no later than 4 pm Eastern Time on May 12, 2023. Late proposals will not be accepted under any circumstances. It is the responsibility of the firm submitting proposals to ensure that the point of contact has received a completed proposal by the required deadline.

The digital files must be emailed to:

Jessica Lavalette
Director of Finance and Administration
jlavalette@burlingtonvt.gov

Respondents will receive a confirmation email when the submittal is successful received. Proposals submitted after the due date and time will be rejected and not considered.

Questions concerning this RFP must be made via email to Jessica Lavalette on or before April 26, 2023. Responses to all submitted questions will be posted at <https://www.burlingtonvt.gov/RFP> by May 2, 2023. If it is necessary to amend this RFP, the City of Burlington will issue a formal written amendment.

VENDOR SELECTION

The evaluation team will use the following criteria in ranking and selecting finalists for a follow up interview and product demonstration. Price will not be the sole deciding factor.

Criteria	Points
Ability to meet requirements detailed in the RFP	35
Ability to fulfill Scope of Work	
Additional Features of proposed portal	
Software security	
Past experience with delivering similar services for similar sized and complexity projects	20
Experience with providing water resources utilities customer portal	
Years of experience	
References of current clients	
Implementation Approach	20
Technical details of the implementation including the expected input and support from the City	
Availability and qualifications of assigned personnel	
Proposed implementation timeline	
Training plan	
Cost	15
Cost to provide services including deployment/one-time costs, per account or use costs, and annual costs	
Overall value which does not necessarily mean lowest cost.	
On-Going Support and Maintenance	10
On-going support and maintenance provided by the proposer	

No proposal will be considered accepted until all necessary City authorizations, including those required by Board of Finance and City Council if necessary, have been received and an agreement is executed by both parties.

IV. SUBMISSIONS:

A. Qualifications

- a) Cover Letter (not to exceed 2 pages)
- b) Management Proposal – Include a description of proposer’s qualifications, company history, and experience. Also include the following:
 - i) Company Background – Include relevant background and history, company name, address, contact information, years company has been doing business, location of offices, and relevant experience that indicates the qualifications of the company.
 - ii) Insurance Compliance Statement – Provide a statement certifying compliance with the insurance requirements provided in Exhibit B (Burlington Standard Contract Conditions). The statement will also include that a certificate of insurance with the coverage requirements and a 30-day cancellation notice will be provided prior to contract signatures.
 - iii) Project Management – Identify key staff who will be assigned to this project and their qualifications/experience and an organization chart.

- iv) References – Provide at least three (3) references, but no more than five (5), for previous implementations of similar scope. Include client name, contact information and a brief project description with implementation dates.
- B. Description of Software Solution and Ability to Meet Scope of Work – Include a comprehensive description of services with specific attention to Section II: Scope of Work. Include the following elements:
- i) Project Approach/Methodology – Include a complete description of the proposed approach and methodology for the project. This section will include the proposer’s understanding of the project.
 - ii) Ability to Meet the Scope of Work – include a description of the functionality of the proposers software as it relates to the scope of work
 - iii) Additional features – include a description of additional functionality that the software could provide
 - iv) Exceptions to Specifications – Any exceptions to the RFP specifications shall be listed and fully explained on a separate page. The additional page shall be entitled Exceptions to Specifications and submitted with the proposal. Proposers are cautioned that exceptions to the specifications may be cause for rejection of the proposal. Likewise, not listing an exception to the specifications that exists may also be cause for rejection of the proposal.
- C. Implementation Approach
- i) Work Plan – Include all project requirements, proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP.
 - ii) Project Schedule – Include a project schedule indicating a timeline of all the elements of the implementation.
 - iii) Support – Identify specific implementation support/training and a description of ongoing technical support.
- D. Cost Proposal – provide a detailed list of all costs associated with the implementation and annual operational costs for a five (5) year period. List optional items separately. This includes, but is not limited to
- i) Implementation Costs
 - ii) Software licensing
 - (1) Provide costs for AMR vs. AMI customers if applicable.
 - iii) Maintenance costs
 - iv) Additional costs:
 - (1) Professional Services (for any future customization)
 - (2) Optional items

V. EXHIBITS

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

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

VI. CONTRACTING

The Vendor 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 B in this RFP). The certificate of insurance coverage shall be documented on forms acceptable to the City.

VII. 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 B) and the attached Draft Agreement. No proposal will be considered accepted until all necessary City authorizations—including those required by Board of Finance and City Council if necessary—have been received and an agreement is executed by both parties.

VIII. LIMITATIONS OF LIABILITY

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

IX. 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.

X. 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.

XI. 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.

XII. 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.

XIII. 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. Vendor 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 vendor may proceed without any modification being made to the bid or contract documents.

XIV. 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.

XV. PUBLIC HEALTH EMERGENCIES

Bidders are advised that public health emergencies, as declared by the City, the State of Vermont, or the Federal Government, may introduce significant uncertainty into the project, including disruption of timelines or revised practices. Vendor 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 final contract. 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);
- 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 vendor 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 will be excusable, but will not be compensable.

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 []**

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 Agreemental 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

G. Data Breach and Privacy/Cyber Liability: Data Breach and Privacy/Cyber Liability Insurance including coverage for failure to protect confidential information and failure of the security of the Service Provider's computer systems, or the City's systems due to the actions of the Service Provider which results in unauthorized access to the City's data. The limit applicable to this policy shall be no less than Two Million Dollars (\$2,000,000) per occurrence, and must apply to incidents related to the Cyber Theft of the City's property, including but not limited to money and securities.

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.

Rights & Responsibilities

Under Burlington's Livable Wage Ordinance

\$16.98/hr

WHEN

employer *provides* employer assisted health insurance

\$18.09/hr

WHEN

employer *does not provide* employer assisted health insurance

and 12 days of paid time off per year*

*prorated for part-time employees

The law requires employers to display this poster where employees can readily see it.

COVERAGE

Any employer who receives City contracts or grants totaling in excess of \$15,000 for any 12-month period is covered. Covered employees are entitled to livable wages, 12 days paid time off per year* for vacation, sick leave, or personal leave, and all rights under the Fair Labor Standards Act (FLSA), as well as other applicable state and federal laws.

Covered contractors are required to include all subcontracts notice of the Livable Wage Ordinance (LWO), and are liable for LWO violations committed by their covered subcontractors.

ENFORCEMENT

The City is responsible for the administration of the LWO, and has the authority to recover back wages in instances of violations. Employers found in violation of the LWO may be assessed monetary penalties and be barred from future City contracts and grants. The law prohibits retaliation against workers who file a complaint or participate in any proceeding under the LWO.

ADDITIONAL INFORMATION

To obtain additional information about your rights and responsibilities under the LWO, visit the LWO Landing Page (<https://www.burlingtonvt.gov/CT/Livable-Wage-Ordinance>) or contact the LWO at their email address (livablewage@burlingtonvt.gov).

Livable Wage July 1, 2022 - June 30, 2023

Effective July 1, 2022

Certification of Agreement to Comply with the City of Burlington’s Livable Wage Ordinance

I, _____, on behalf of _____ (“the Contractor”), in connection with a contract for _____ services to be provided to the City of Burlington (“the City”), hereby certify, under oath, that the Contractor (and any of its subcontractors or subgrantees under this contract) shall comply with the City’s Livable Wage Ordinance (“LWO”), B.C.O. 21-80 et seq., and that:

- (1) The Contractor shall pay all “covered employees” as defined by the LWO (including covered employees of subcontractors or subgrantees) a livable wage (as determined, or adjusted, annually by the City’s chief administrative officer), and shall provide required paid time off for the term of the contract (*or the duration of the contracted project*);
 - (a) Full-time employees are entitled to 12 days of paid time off per year; and
 - (b) Part-time employees are entitled to 12 days of paid time off per year on a prorated basis;
 - (c) For a covered employer that provides employer assisted health care, the livable wage shall be at least \$16.98 per hour; and
 - (d) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least \$18.09 per hour.

- (2) The Contractor shall post a notice regarding the applicability of the LWO in the workplace or in other locations where covered employees normally work, and where such notice can be readily seen;

- (3) Upon request of the City’s chief administrative officer, the Contractor, for itself and, as applicable, for any of its subcontractors or subgrantees, shall provide payroll records, health insurance enrollment records, and other relevant documentation, as deemed necessary by the chief administrative officer, within ten (10) business days from receipt of the City’s request;

- (4) The Contractor shall cooperate in any investigation conducted pursuant to the LWO by the City’s designated accountability monitors or the City’s Office of City Attorney & Corporate Counsel;

- (5) The Contractor shall not retaliate, nor allow any of its subcontractors or subgrantees to retaliate, against an employee or other person because such employee or person has exercised rights or is planning to exercise rights protected under the LWO, or has cooperated in an investigation conducted pursuant to the LWO;

- (6) The Contractor is required to insert in all subcontracts the requirements of the LWO. The Contractor is liable for violations of the LWO committed by its covered subcontractors.

Date: _____

By: _____

Contractor, or its duly authorized agent

Subscribed and sworn to before me:

Date: _____

Notary Public

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 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

EXHIBIT E

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.

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