

CITY OF BURLINGTON
REQUEST FOR PROPOSALS
CITY HALL PARK KIOSK

Issued Date: August 14, 2023
Issued By: Community & Economic Development Office (CEDO)
Deadline: September 29, 2023 12 noon

I. GENERAL INFORMATION & PROJECT DESCRIPTION

City Hall Park Kiosk, City Hall Park, Burlington, VT 05401

CEDO, in collaboration with multiple city departments including, Burlington Parks, Recreation & Waterfront, Business & Workforce Development, Burlington City Arts and Department of Public Works, is requesting innovative proposals from qualified design/build firms or teams for the design, fabrication and delivery of a kiosk in City Hall Park that will be able to accommodate a range of uses, including food, beverage and retail services. The City will be responsible for securing the required zoning permit and ensuring water, wastewater and electrical hookups are available on the site in coordination with the selected contractor.

We are requesting that RFP respondents submit a conceptual design for the City Hall Park Kiosk along with an anticipated schedule and budget for completing the design, fabrication and delivery of the Kiosk to City Hall Park.

Questions concerning this RFP must be made via email to Samantha Dunn sdunn@burlingtonvt.gov per the schedule outlined below. Responses to all submitted questions will be posted at: <http://www.burlingtonvt.gov/RFP>.

Issue date:	8/14/2023
Site Visit:	9/6/14 at 3pm
Questions due	9/11/2023
Answers posted:	9/15/2023
Proposals due:	9/29/2023
Proposal selection	10/8/2023
Contract signing, kickoff:	10/17
Delivery/Installation:	Spring 2024

Inquiries to:
Samantha Dunn, Asst. Director for Community Works
Community & Economic Development Office
sdunn@burlingtonvt.gov
(802) 829-6385

Responses to the proposal will be made through the City Hall Park Kiosk Project at the Burlington City Arts portal: <https://burlingtoncityarts.awardsplatform.com/>

II. PROJECT BACKGROUND

City Hall Park has been used as a public space dating back to the 18th Century. While its name and configuration have changed over time, it has remained a significant public open space in the core of Burlington's downtown. In 2020 the City completed a historic reconstruction of the Park that prioritizes a healthy, functioning urban park, accessibility for all users in all seasons, and the enhancement of this historic space to meet the modern needs of the community. Today the park is activated year-round with concert series, festivals, and a summer and winter food and makers market that bring residents and tourists of all ages to enjoy the City's cultural offerings. Learn more about the reconstruction of City Hall Park at: <http://greatstreetsbtv.com/city-hall-park>. The design for this reconstructed park included a food/beverage kiosk that was not included in the construction for the budgetary reasons. The City is now moving forward with this component.

The kiosk will be custom designed for the City to include engaging net zero energy education, an "information station" with upcoming events and information on how to access important resources and services as well as the infrastructure required for new food and drink options.

III. SCOPE OF WORK

This scope of work is for the design, engineering, fabrication, delivery and installation of a prefabricated food/beverage kiosk for City Hall Park as shown in the attached site plan (attachment A) and specified below. The kiosk will be connected to on-site water, sewer and electricity and will operate year-round. The Scope of Work includes:

1) Design & Engineering

Meet up to three times with the City Team to discuss, modify and finalize the proposed conceptual design for the Kiosk. Meet with selected kiosk vendor to finalize interior design/layout/components.

Develop and expand a Basis of Design document to generate a Structural Report that quantifies target performance criteria, framing layout and loads (live/wind/ice/seismic/thermal, etc.). Carry out pre-engineering of systems to confirm system depths, framing, connection configurations, etc.

Engage a Vermont State licensed Professional Engineer to provide calculations and signed shop drawings for use during fabrication.

Produce design documents necessary for fabrication and permitting of the structure.

The proposal must meet the following parameters:

Design/Build Budget: \$200,000

Size: Maximum footprint is 10 feet by 22 feet

Timeline: Ready to install March 2024

- Accommodate food/beverage/retail vending throughout the day/evening and all four seasons;
- Align with and respond to the contemporary minimalist park design (read about the design philosophy of the park and view images of the park [here](#));
- Accessible service window;
- Covered outdoor space for customers;
- Some transparency to allow for views through the kiosk;
- A way to close/secure the structure when not operating (see example here);
- Lighting design that provides an interactive and engaging experience for pedestrians when opened and closed;
- Storage area for tables, chairs, cleaning supplies;
- Signage for public messaging;
- Durable materials that are inherently resistant to theft, vandalism and weathering (deep freezes, snow, ice, salt, graffiti, maintenance of sidewalks, etc.);
- High performance envelope and mechanical systems (including heating, cooling and ventilation) designed for IECC Climate Zone 6 and in compliance with the State's Energy Code and the City's [Net Zero Energy Roadmap](#) (no fossil fuels);
- Materials and processes with the lowest possible embodied carbon;
- Accommodate electrical power and loads for all equipment with a load center and circuit breakers installed in the interior of the unit with circuit run out locations, switching and outlets as designated by vendor (electrical stub up and feeders is to be provided by others);
- Interior wall surfaces and ceiling to be clad with durable material with solid backing material a minimum of ¾" thick; interior panels mounted with exposed fasteners for easy access to wall/ceiling cavity for future work;
- Floor to be constructed with solid plywood sub-material and durable commercial grade flooring;
- Basic interior fit-out to include counters, sink, refrigeration; additional allowance for specified equipment in consultation with vendor.

2) Fabrication

Kiosk shall be fabricated off-site per final design drawings and permit requirements.

3) Delivery & Installation

Bid shall include delivery to the site at City Hall Park in Burlington and final set of the kiosk. Installation methodology involves setting the unit in place, leveling the kiosk and anchoring to the plaza. Installation will also include assisting with electrical and plumbing connections.

Water, power, and wastewater connections shall be coordinated with the City and City's site contractor.

IV. **SUBMISSIONS**

Submissions shall include:

- 1) Cover letter that outlines the vision for the project, rationale and team composition.
- 2) Plans and elevations of the proposed design.
- 3) Detailed perspective or scale model of the proposed design. If providing a scale model, include digital photographs in digital submission.
- 4) Portfolio of past related work or up to 5 images of past projects that support the applicant's qualifications for this project.
- 5) Narrative description of the proposed design that includes:
 - a. Explanation of the overarching themes of the work;
 - b. Discussion of how the proposal meets each of the parameters outlined in Section III above;
 - c. Approach to design refinement in collaboration with the City staff and selected operator;
 - d. Techniques for fabrication and familiarity with materials proposed;
 - e. Requirements for installation.
- 6) Project Team consisting of:
 - a. Narrative outlining the roles of each firm and team members;
 - b. Firm description(s);
 - c. Biography/resume of team members;
 - d. References.
- 7) Detailed project schedule, including design, fabrication and delivery.
- 8) Detailed budget including time, materials, engineering, installation, travel, and any other applicable direct expenses.
- 9) Executed copy of Exhibit A attached to this RFP

Submissions must be uploaded no later than 12 noon on September 29th, 2023 at this portal link (City Hall Park Kiosk Project):

<https://burlingtoncityarts.awardsplatform.com/>

V. **SELECTION PROCESS**

Proposals will be reviewed and evaluated by a committee made up of City Staff, local business and a panel of Design Professionals. Proposals will be rated according to the following criteria:

Strength of Conceptual Design	30
Project Understanding: Demonstrated understanding of the parameters of this project, its limitations and potential.	20
Budget / Schedule: Outline how the project will be managed as related to proposed budget and schedule.	20
Depth of Skills: Depth of relevant technical experience in undertaking this type of project.	15
Quality, Clarity & Completeness of Submittal Package	15

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.

VI. EXHIBITS

- Exhibit A: Understanding of RFP Procedure, Terms and Conditions
- Exhibit B: Rendered Site Plan & Dimensioned Site Plan
- Exhibit C: Precedent Images
- Exhibit D: Draft Design/Build Contract
- Exhibit E: Burlington Standard Contract Conditions
- Exhibit F: Burlington Livable Wage Ordinance Certification
- Exhibit G: Burlington Outsourcing Ordinance Certification
- Exhibit H: 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 E 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 E) 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.

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.

EXHIBIT A

Understanding of RFP Procedure, Terms and Conditions

This page to be returned with qualifications submission

I acknowledge that I have read and understand all procedures and requirements of the above reference RFP and have complied fully with the general terms and conditions outlined in the RFP.

Consultant/Team: _____

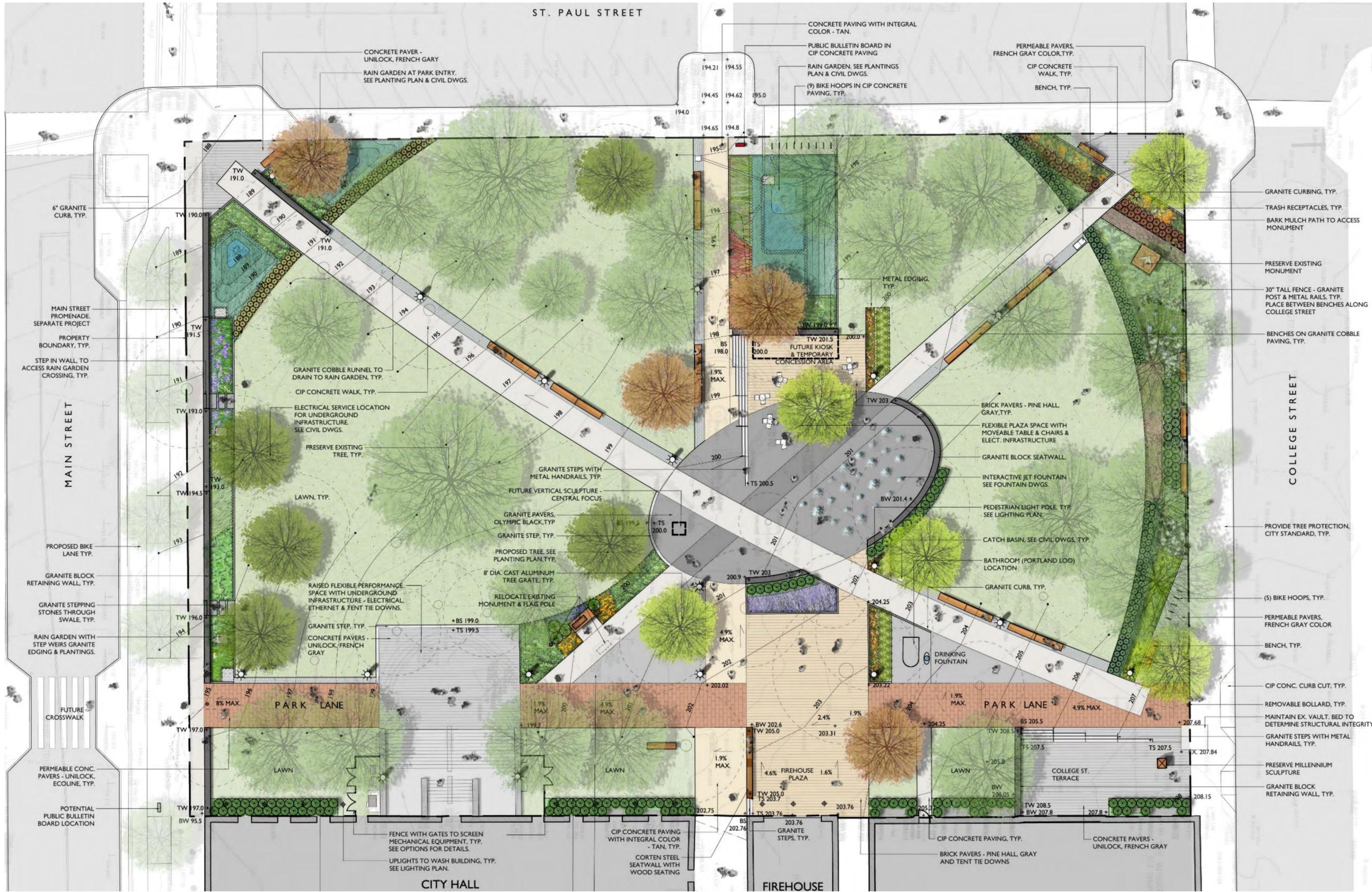
Representative's Printed Name: _____

Representative's Signature: _____

Date: _____

EXHIBIT B:

Rendered Site Plan & Dimensioned Site Plan



6" GRANITE CURB, TYP.

MAIN STREET PROMENADE, SEPARATE PROJECT

PROPERTY BOUNDARY, TYP.

STEP IN WALL TO ACCESS RAIN GARDEN CROSSING, TYP.

MAIN STREET

PROPOSED BIKE LANE TYP.

GRANITE BLOCK RETAINING WALL, TYP.

GRANITE STEPPING STONES THROUGH SWALE, TYP.

RAIN GARDEN WITH STEP WEIRS GRANITE EDGING & PLANTINGS.

FUTURE CROSSWALK

PERMEABLE CONC. PAVERS - UNILOCK, ECOLINE, TYP.

POTENTIAL PUBLIC BULLETIN BOARD LOCATION

CONCRETE PAVER - UNILOCK, FRENCH GARY

RAIN GARDEN AT PARK ENTRY. SEE PLANTING PLAN & CIVIL DWGS.

CONCRETE COBBLE RUNNEL TO DRAIN TO RAIN GARDEN, TYP.

CIP CONCRETE WALK, TYP.

ELECTRICAL SERVICE LOCATION FOR UNDERGROUND INFRASTRUCTURE. SEE CIVIL DWGS.

PRESERVE EXISTING TREE, TYP.

LAWN, TYP.

GRANITE STEPS WITH METAL HANDRAILS, TYP.

FUTURE VERTICAL SCULPTURE - CENTRAL FOCUS

GRANITE PAVERS, OLYMPIC BLACK, TYP.

GRANITE STEP, TYP.

PROPOSED TREE. SEE PLANTING PLAN, TYP.

8" DIA. CAST ALUMINUM TREE GRATE, TYP.

RELOCATE EXISTING MONUMENT & FLAG POLE

RAISED FLEXIBLE PERFORMANCE SPACE WITH UNDERGROUND INFRASTRUCTURE - ELECTRICAL, ETHERNET & TENT TIE DOWNS.

GRANITE STEP, TYP.

CONCRETE PAVERS UNILOCK, FRENCH GRAY

PARK LANE

LAWN

LAWN

FENCE WITH GATES TO SCREEN MECHANICAL EQUIPMENT, TYP. SEE OPTIONS FOR DETAILS.

UPLIGHTS TO WASH BUILDING, TYP. SEE LIGHTING PLAN.

CITY HALL

CONCRETE PAVING WITH INTEGRAL COLOR - TAN.

PUBLIC BULLETIN BOARD IN CIP CONCRETE PAVING

RAIN GARDEN. SEE PLANTINGS PLAN & CIVIL DWGS.

(9) BIKE HOOPS IN CIP CONCRETE PAVING, TYP.

CONCRETE PAVING WITH INTEGRAL COLOR - TAN, TYP.

CORTEN STEEL SEATWALL WITH WOOD SEATING

GRANITE STEPS, TYP.

CONCRETE PAVERS - UNILOCK, FRENCH GRAY

BRICK PAVERS - PINE HALL, GRAY AND TENT TIE DOWNS

BRICK PAVERS - PINE HALL, GRAY, TYP.

FLEXIBLE PLAZA SPACE WITH MOVEABLE TABLE & CHAIRS & ELECT. INFRASTRUCTURE

GRANITE BLOCK SEATWALL

INTERACTIVE JET FOUNTAIN SEE FOUNTAIN DWGS.

PEDESTRIAN LIGHT POLE, TYP. SEE LIGHTING PLAN.

CATCH BASIN. SEE CIVIL DWGS, TYP.

BATHROOM (PORTLAND LOO) LOCATION

GRANITE CURB, TYP.

DRINKING FOUNTAIN

PARK LANE

LAWN

LAWN

COLLEGE ST. TERRACE

FIREHOUSE

PERMEABLE PAVERS, FRENCH GRAY COLOR, TYP.

CIP CONCRETE WALK, TYP.

BENCH, TYP.

GRANITE CURBING, TYP.

TRASH RECEPTACLES, TYP.

BARK MULCH PATH TO ACCESS MONUMENT

PRESERVE EXISTING MONUMENT

30" TALL FENCE - GRANITE POST & METAL RAILS, TYP. PLACE BETWEEN BENCHES ALONG COLLEGE STREET

BENCHES ON GRANITE COBBLE PAVING, TYP.

PROVIDE TREE PROTECTION, CITY STANDARD, TYP.

(5) BIKE HOOPS, TYP.

PERMEABLE PAVERS, FRENCH GRAY COLOR

BENCH, TYP.

CIP CONC. CURB CUT, TYP.

REMOVABLE BOLLARD, TYP.

MAINTAIN EX. VAULT. BED TO DETERMINE STRUCTURAL INTEGRITY

GRANITE STEPS WITH METAL HANDRAILS, TYP.

PRESERVE MILLENNIUM SCULPTURE

GRANITE BLOCK RETAINING WALL, TYP.

COLLEGE STREET

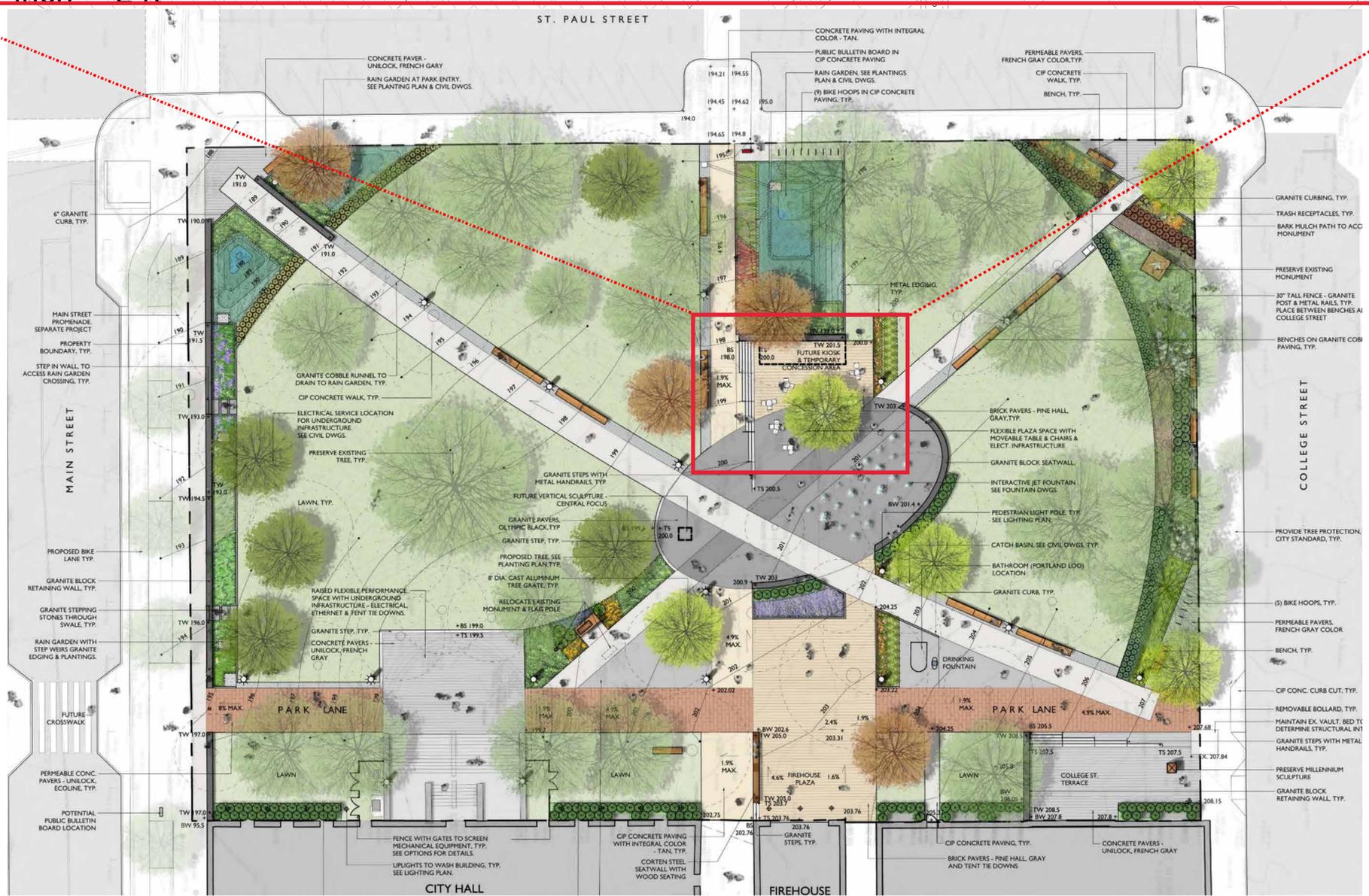
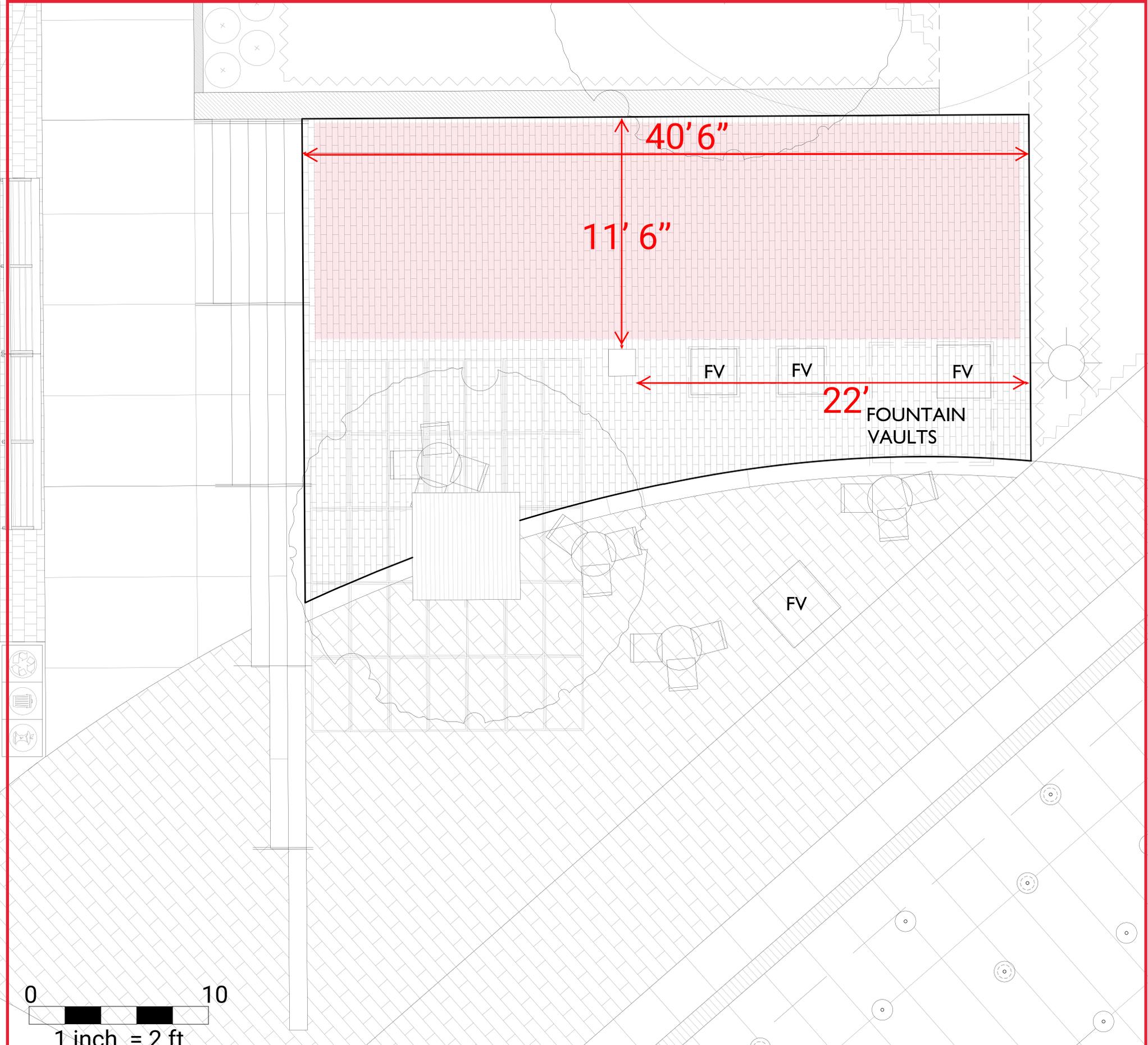


Exhibit C:

Precedent Images



OPEN

CLOSED



Downtown Brooklyn Kiosk, NYC



OPEN

CLOSED



Harbour Kiosk, Hong Kong



Würstelstand Artur, Vienna



Kioskque Eiffel, Paris



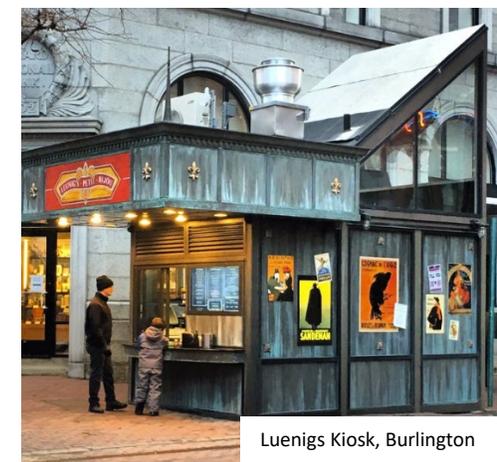
Bryant Park Kiosk, NYC



Shake Shack, NYC



Cubox Solar Kiosk



Luenigs Kiosk, Burlington

Exhibit D:

Draft Contract

CITY OF BURLINGTON
DRAFT CONTRACTOR CONTRACT

This Contractor Contract (“Contract”) is entered into by and between the City of Burlington, Vermont (“the City”), and [REDACTED] (“Contractor”), a Vermont corporation located at [REDACTED].

Contractor and the City agree to the terms and conditions of this Contract.

1. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Contract Documents”** means all the documents identified in Section 4 (Scope of Work) of this Contract.
- B. **“Effective Date”** means the date on which this Contract is approved and signed by the City, as shown on the signature page.
- C. **“Party”** means the City or Contractor, and **“Parties”** means the City and Contractor.
- D. **“Project”** means the [REDACTED].
- E. **“Work”** means the services described in Section 5 (Payment for Services) of this Contract, along with the specifications contained in the Contract 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 Contract 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 Contract.
- C. **Purpose.** The City seeks to employ the Contractor to [REDACTED].

3. EFFECTIVE DATE & TERM

- A. **Effective Date.** This Contract shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Contract before the Effective Date and shall have no obligation to pay Contractor for any performance or expense incurred before the Effective Date or after the expiration or termination of this Contract.

B. Term. This Contract 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.

4. SCOPE OF WORK

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

5. PAYMENT FOR SERVICES

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

Contractor 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 Contractor in the manner and at such times as set forth in the Contract Documents [or as follows: [REDACTED]]. 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 Contractor for all services and expenses under this Contract shall not exceed the maximum limiting amount of \$[REDACTED]. The City shall not be liable to Contractor for any amount exceeding the maximum limiting amount without duly authorized written approval.

D. Invoice. Contractor 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. Contractor shall not be entitled to payment under this Contract without providing sufficient backup documentation satisfactory to the City.

6. SECTION & ATTACHMENT HEADINGS

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

7. CONTRACT DOCUMENTS & ORDER OF PRECEDENT

- A. Contract Documents.** The Contract Documents are hereby adopted, incorporated by reference, and made part of this Contract. The intention of the Contract 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 Contract Documents:

Attachment A: Request for Proposals dated [REDACTED]

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

Attachment C: Burlington Standard Contract Conditions for Contractors

Attachment D: Burlington Livable Wage Ordinance Certification

Attachment E: Burlington Outsourcing Ordinance Certification

Attachment F: Burlington Union Deterrence Ordinance Certification

Attachment G: Contractor's Certificate of Insurance

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

8. [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.

<p>Contractor [Name of Contractor]</p> <p>By: _____</p> <p>Date: _____</p>
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<p>City of Burlington [Department]</p> <p>By: _____ [Name] [Title]</p> <p>Date: _____</p>

Exhibit E:

Burlington Standard Contract Conditions

**BURLINGTON STANDARD CONTRACT CONDITIONS
FOR CONTRACTORS**

1. **REGISTRATION:** The Contractor agrees to be registered with the Vermont Secretary of State's office as a business entity doing business in the State of Vermont at all times this Contract is effective. This registration must be complete prior to Contract execution.

2. **INSURANCE:** Prior to beginning any work, the Contractor shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the City. 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 Contract. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. If this Contract 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 Contractor's actions or omissions. The liability insurance furnished by the Contractor is primary and non-contributory for all the additional insured.

The Contractor is responsible to verify and confirm in writing to the City that: (i) all subcontractors must comply with the same insurance requirements as the Contractor; (ii) all coverage shall include adequate protection for activities involving hazardous materials; and (iii) all work activities related to the Contract 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 Contractor for the Contractor's operations. These are solely minimums that have been developed and must be met to protect the interests of the City.

A. General Liability And Property Damage: With respect to all operations performed by the Contractor, subcontractors, agents or workers, it is the Contractor'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 Contractors'/Contractors' 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 Contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont and ensure that all subcontractors carry the same workers' compensation insurance for all work performed by them under this Contract. 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 Contractor shall carry appropriate professional liability insurance covering errors and omissions made during their performance of contractual duties with the following minimum limits:
 - (a) \$3,000,000 - Annual Aggregate
 - (b) \$2,000,000 - Per Occurrence
2. Deductibles: The Contractor is responsible for any and all deductibles.
3. Coverage: Prior to performing any work, the Contractor shall provide evidence of professional liability insurance coverage defined under this section. In addition, the Contractor shall maintain continuous professional liability coverage for the period of the Contract and for a period of five years following substantial completion of construction.

D. Automobile Liability: The Contractor shall carry commercial automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the Contract. 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 Contractor shall carry valuable papers insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other information or data relating to the work, whether supplied by the City or developed by the Contractor, subcontractor, 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 Contractor 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 Contractor’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 Contractor shall disclose in writing to the City any actual or potential conflicts of interest or any appearance of a conflict of interest by the Contractor, its employees or agents, or its subcontractors, if any.
4. **PLANS, RECORDS, AND AVAILABLE DATA:** The City agrees to make available, at no charge, for the Contractor’s use all available data related to the Contract including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.
5. **PERSONNEL REQUIREMENTS AND CONDITIONS:** The Contractor shall employ only qualified personnel with appropriate and valid licensure, to the extent a license is required for the work performed. The City shall have the right to approve or disapprove key personnel assigned to administer activities related to the Contract.

Except with the approval of the City, during the life of the Contract, the Contractor shall not employ:

1. Any City employees who are directly involved with the awarding, administration, monitoring, or performance of the Contract or any project(s) that are the subjects of the Contract.
2. Any person so involved within one (1) year of termination of employment with the City.

The Contractor warrants that no company or person has been employed or retained, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that no company or person has been paid or has a contract with the Contractor to be paid, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, the City shall have the right to annul the Contract, without liability to the City, and to regain all costs incurred by the City in the performance of the Contract.

The City reserves the right to require removal of any person employed by a Contractor, from

work related to the Contract, for misconduct, incompetence, or negligence as determined by the City, in the due and proper performance of Contractor's duties, or for neglecting or refusing to comply with the requirements of the Contract.

6. **PERFORMANCE:** Contractor warrants that performance of Work will conform to the requirements of this Contract. Contractor 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 Contractor for its own business.
7. **DESIGN STANDARDS:** Unless otherwise specifically provided for in the Contract, or directed in writing, Contractor services, studies or designs, that include or make reference to plans, specifications, special provisions, computations, estimates, or other data shall be in conformance with applicable City, state, and federal specifications, manuals, codes or regulations, including supplements to or revisions thereof, adopted prior to or during the duration of this Contract. In case of any conflict with the guidelines referenced, the Contractor is responsible to identify and follow any course of direction provided by the City.
8. **RESPONSIBILITY FOR SUPERVISION:** The Contractor shall assume primary responsibility for general supervision of Contractor employees and their subcontractors for all work performed under the Contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Contract. The Contractor shall be responsible to the City for all acts or omissions of its subcontractors and any other person performing work under this Contract.
9. **UTILITIES & ACCESS:** Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the Contractor will counsel with the City and will enter into any necessary contacts and discussions with the affected owners regarding any requirement necessary for revisions of facilities or existing installations, both above and below ground. Any such installations must be completely and accurately exhibited on any detail sheets or plans. The Contractor shall inform the City, in writing, of any such contacts and the results thereof.

The City shall provide the land and/or construction easements for the land upon which the Work under this Contract is to be done, and will, so far as is convenient, permit the Contractor to use as much of the land as is required for the erection of temporary construction facilities and storage of materials, together with the right of access to same, but beyond this, the Contractor shall provide at the Contractor's cost and expense any additional land required.

10. PROTECTION OF PROPERTY:

- A. **In General:** Contractor shall avoid damage, as a result of its operations, to trees, plant life, existing sidewalks, curbs, streets, alleys, pavements, utilities, adjoining property, the work

of other contractors, and the property of the City and others. Contractor shall, at its own expense, repair any damage to any property caused by Contractor's operations.

- B. Underpinning and Shoring: Contractor shall become familiar with the requirements of local and state laws applicable to underpinning, shoring and other work affecting adjoining property, and wherever required by law Contractor shall shore up, brace, underpin, secure and protect as may be necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected in any way by the excavations or other operations connected with the work to be performed under this Contract.
- C. Damage to Utilities: Contractor shall be responsible for all damage to any utility equipment or structures caused by its acts or omissions to act, whether negligent or otherwise, and shall leave the utility equipment or structures in as good condition as they were in prior to the commencement of operations under this contract. However, any utility equipment or structures damaged as a result of any act, or omission to act, of the contractor may, at the option of the city department, utility company, or other party owning or operating the utility equipment or structures damaged, be repaired by the city department, utility company, or other party, and in that event, the cost of repairs shall be borne by Contractor.

11. INSPECTION OF WORK: The City shall, at all times, have access to the Contractor's work for the purposes of inspection, accounting, and auditing, and the Contractor shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Contractor shall permit the City or representative for the City the opportunity to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the Contractor pursuant to the Contract, as well as any preparatory work, work-in-progress, or completed work at a field site, where applicable.

Conferences, visits to a site, or an inspection of the work, may be held at the request of any involved party or by representatives of the City.

12. REVIEWS AND ACCEPTANCES: All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the Contractor, shall be subject to review and endorsement by the City.

Approval for any inspections or sequences of progress of work shall be documented by letters, memoranda or other appropriate written means.

A frequency for formal reviews shall be set forth in the Contract. Informal reviews, conducted by the City will be performed as deemed necessary. The Contractor shall respond to all official comments regardless of their source. The Contractor shall supply the City with written copies of all correspondence relating to formal and informal reviews.

No acceptance shall relieve a Contractor of their professional obligation to correct any defects or errors in their work at their own expense.

13. PUBLIC RELATIONS: Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the Contractor will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Contractor shall conduct themselves with propriety. The Contractor agrees to inform property owners and/or tenants, in a timely manner, if there is need for entering upon private property as an agent of the City, in accordance with 19 V.S.A. § 35 and §.503, to accomplish the work under the Contract. The Contractor agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the Contractor, the City shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Contractor is acting as an agent of the City.

14. ACKNOWLEDGEMENTS: Acknowledgment of the City's support must be included in any and all publications, renderings and project publicity, including audio/visual materials developed under this Contract.

15. APPEARANCES:

A. Hearings and Conferences: The Contractor shall provide services required by the City and necessary for furtherance of any work covered under the Contract. These services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its contractual services covered under the Contract.

The Contractor shall perform any liaison that the City deems necessary for the furtherance of the work and participate in conferences with the City, at any reasonable time, concerning interpretation and evaluation of all aspects covered under the Contract.

The Contractor further agrees to participate in meetings with the City and any other interested or affected participant, for the purpose of review or resolution of any conflicts pertaining to the Contract.

The Contractor shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto in accordance with the Contract.

B. Appearance as Witness: If and when required by the City, the Contractor, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related contract, on behalf of the City. The Contractor shall be equitably paid, to the extent permitted by law, for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Contract.

16. RESPONSIBILITY OF COST: The Contractor shall furnish and pay the cost, including taxes (except tax-exempt entities) and all applicable fees, of all the necessary materials and shall furnish and pay for full time on-site superintendence during any construction activity,

labor, tools, equipment, and transportation. The Contractor shall perform all the Work required for the construction of all items listed and itemized under Attachment A (Request for Proposals) and Attachment B (Contractor's Response to Request for Proposals) and in strict accordance with the Contract Documents and any amendments thereto and any approved supplemental plans and specifications. The Contractor agrees to pay all claims for labor, materials, services and supplies and agrees to allow no such charge, including no mechanic's lien, to be fixed on the property of the City.

17. PAYMENT PROCEDURES: The City shall pay, or cause to be paid, to the Contractor or the Contractor's legal representative payments in accordance with the Contract. All payments will be made in reliance upon the accuracy of all representations made by the Contractor, whether in invoices, progress reports, emails, or other proof of work. When applicable, for the type of payment specified in the Contract, the progress report shall summarize actual costs and any earned portion of fixed fee.

All invoices and correspondence shall indicate the applicable project name, project number and the Contract number. When relevant, the invoice shall further be broken down in detail between projects.

When applicable, for the type of payment specified in the Contract, expenses for meals and travel shall be limited to the current approved in-state rates, as determined by the State of Vermont's labor contract, and need not be receipted. All other expenses are subject to approval by the City and must be accompanied with documentation to substantiate their charges.

No approval given or payment made under the Contract, shall be conclusive evidence of the performance of the Contract, either wholly or in part thereof, and no payment shall be construed to be acceptance of defective work or improper materials.

The City agrees to pay the Contractor and the Contractor agrees to accept, as full compensation, for performance of all services rendered and expenses incurred, the fee specified in the Contract.

Upon completion of all services covered under the Contract and payment of the agreed upon fee, the Contract with its mutual obligations shall end.

18. DUTY TO INFORM CITY OF CONTRACT DOCUMENT ERRORS: If Contractor knows, or has reasonable cause to believe, that a clearly identifiable error or omission exists in the Contract Documents, including but not limited to unit prices and rate calculations, Contractor shall immediately give the City written notice thereof. Contractor 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 Contract Documents or that Contractor may proceed without any modification being made to Contract Documents.

19. NON-APPROPRIATION: The obligations of the City under this Contract 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 Contract, the

Contract 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 Contract 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 Contractor as soon as practicable of any non-appropriation, and Contractor 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.

20. CHANGES AND AMENDMENTS: No changes or amendments to the Work of the Contract shall be effective unless documented in writing and signed by authorized representatives of the City and the Contractor.

21. EXTENSION OF TIME: The Contractor agrees to prosecute the work continuously and diligently, and no charges or claims for damages shall be made by the Contractor for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Contract. The Contractor may request an extension of time for such delays or hindrances, if any.

Time extensions may be granted by amendment only for excusable delays, such as delays beyond the control of the Contractor and without the fault or negligence of the Contractor.

The City may suspend the work or any portion thereof for a period of not more than ninety (90) days at its discretion or such further time as agreed by the Contractor. The Contractor will be allowed an extension of contract time directly attributable to any suspension.

22. PUBLIC HEALTH EMERGENCY:

A. Compliance with Mandates and Guidance: The Contractor is advised that public health emergencies—meaning public health emergencies, as declared by the City, the State of Vermont, or the Federal Government—may introduce significant uncertainty into the project. The Contractor must comply with all local, state, federal orders, directives, regulations, guidance, advisories during a public health emergency. Contractor shall adhere to the below provisions and consider public health emergencies as it develops project schedules and advances the Work.

B. Creation of Public Health Emergency Plan: For any work performed on-site at a City location, the Contractor shall create a public health emergency plan acceptable to the City. The Contractor shall be responsible for following this plan and ensuring that the project or site is stable and in a safe and maintainable condition.

- a. **Public Health Emergency Plan:** The Public Health Emergency Plan will contain:
 - i. Measures to manage risk and mitigate potential impacts to the health and safety of the public, the City and Contractor’s workers;

- ii. Explicit reference to any health and safety performance standards and mandates provided by the City, the State of Vermont, the Federal government, or other relevant governmental entities;
- iii. A schedule for possible updates to the plan as standards and mandates change; and
- iv. Means to adjust the schedule and sequence of work should the emergency change in nature or duration.

b. Review and Acceptance of Plan:

- i. Contractor must provide the plan to the City by the Effective Date of this Contract or by one (1) week prior to the commencement of on-site activities, whichever is later.
- ii. The City shall have sole discretion to require changes to the plan.
- iii. The City may revisit the plan at any time to verify compliance with obligations that arise under a state of emergency.

C. Enforcement & Stoppage of Work: Contractor fails to comply with either 1) the approved public health emergency plan, or 2) any local, state, federal orders, directives, regulations, guidance, or advisories during a public health emergency, the City may stop Work under the Contract until such failure is corrected. Such failure to comply shall constitute a breach of the Contract.

Upon stoppage of work, the City may allow Work to resume, at a time determined by the City, under this Contract if such failure to comply is adequately corrected. The City shall have sole discretion in determining if Contractor has adequately corrected its failure to comply with the above.

If Contractor's breach of Contract has not been cured within seven (7) days after notice to stop Work from the City, then City may terminate this Contract, at its discretion.

D. City Liability Relating to Potential Delays: 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 a public health emergency will be excusable, but will not be compensable.

23. FORCE MAJEURE: Neither Party to this Contract shall be liable to the other for any failure or delay of performance of any obligation under this Contract 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 Contract within two (2) years of the originally scheduled completion date, either Party may by written notice request to amend or terminate the Contract. The suspension of any obligations under this section shall not cause the term of this Contract to be extended and shall not affect any rights accrued under this Contract prior to the occurrence of the Force Majeure. The Party giving notice of the Force Majeure shall also give notice of its cessation.

24. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES: The City may, in writing, and without invalidating the Contract, require changes resulting from revision or abandonment of work already performed by the Contractor or changes in the scope of work.

The value of such changes, to the extent not reflected in other payments to the Contractor, shall be incorporated in an amendment and be determined by mutual agreement. Any adjustments of this nature shall be executed under the appropriate fee established in the Contract, based on the adjusted quantity of work.

No changes for which additional fee payment is claimed shall be made unless pursuant to a written order from the City, and no claim for payment shall be valid unless so ordered.

The Contractor agrees to maintain complete and accurate records, in a form satisfactory to the City for all time devoted directly to same by Contractor employees. The City reserves the right to audit the records of the Contractor related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Contract. When changes are so ordered, no additional work shall be performed by the Contractor until a Contract amendment has been fully executed, unless written notice to proceed is issued by the City. Any claim for extension of time that may be necessitated as a result of extra work or additional services and changes shall be given consideration and evaluated insofar as it directly relates to the change.

25. RETURN OF MATERIALS: Contractor agrees that at the expiration or termination of this Contract, it shall return to City all materials provided to it during its engagement on behalf of City.

26. ACCEPTANCE OF FINAL PAYMENT; RELEASE: Contractor's acceptance of the final payment shall be a release in full of all claims against the City or its agents arising out of or by reason of the Work. Any payment, however, final or otherwise, shall not release the Contractor or their sureties from any obligations under the Contract Documents or any performance or payment bond.

27. OWNERSHIP OF THE WORK: The Contractor agrees that the ownership of all studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM and other material prepared or collected by the Contractor, hereafter referred to as "instruments of professional service", shall become the property of the City as they are prepared and/or developed during execution of the Contract. The Contractor agrees to allow the City access to all "instruments of professional service" at any time. The Contractor shall not copyright any material originating under the Contract without prior written approval of the City. No publications or publicity of the work, in part or

in total, shall be made without the express written agreement of the City, except that Contractor may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.

- 28. PROPRIETARY RIGHTS:** The Parties under the Contract hereby mutually agree that, if patentable discoveries or inventions should result from work performed by the Contractors under the Contract, all rights accruing from such discoveries or inventions shall be the sole property of the Contractor. The Contractor, however, agrees to and does hereby grant to the City 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 Contract.
- 29. PUBLIC RECORDS:** The Contractor understands that any and all records related to and acquired by the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City. The Contractor 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.
- 30. RECORDS RETENTION AND ACCESS:** The Contractor agrees to retain, in its files, and to produce to the City—within the time periods requested—all books, documents, Electronic Data Media (EDM), accounting records, and other records produced or acquired by the Contractor in the performance of this Contract which are related to the City, at any time during this Contract and for a period of at least three (3) years after its completion or termination. In addition, if any audit, claim, or litigation is commenced before the expiration of that three (3) year period, the records shall be retained until all related audits, claims, or litigation are resolved. The Contractor further agrees that the City shall have access to all the above information for the purpose of review and audit during the Contract period and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the City, if requested, in the format in which the records were obtained, created, or maintained, such that their original use and purpose can be achieved. Contractor, sub-contractors, or their representatives performing work related to the Contract, are responsible to ensure that all data and information created or stored on EDM is secure and can be duplicated and used if the EDM mechanism is subjected to power outage, obsolescence, or damage.
- 31. CONTRACT DISPUTES:** In the event of a dispute between the parties to this Contract each party will continue to perform its obligations unless the Contract is terminated in accordance with these terms.
- 32. SETTLEMENTS OF MISUNDERSTANDINGS:** To avoid misunderstandings and litigation, it is mutually agreed by all Parties that the [Head of Department] shall act as referee

on all questions arising under the terms of the Contract and that the decision of the [Head of Department] in such cases shall be binding upon both Parties.

33. CITY'S OPTION TO TERMINATE: The Contract may be terminated in accordance with the following provisions, which are not exclusive:

A. Termination for Convenience: At any time prior to completion of services specified under the Contract, the City may terminate the Contract for any reason by submitting written notice via certified or registered mail to the Contractor, 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 Contractor 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. However, if a notice of termination is given to a Contractor prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Contractor will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the City's approval. The Contractor shall make no claim for additional compensation against the City by reason of such termination.

B. Termination for Cause:

i. Breach: Contractor shall be in default if Contractor fails in any manner to fully perform and carry out each and all conditions of this Contract, including, but not limited to, Contractor's failure to begin or to prosecute the Work in a timely manner or to make progress as to endanger performance of this Contract; failure to supply a sufficient number of properly skilled employees or a sufficient quantity of materials of proper quality; failure to perform the Work unsatisfactorily as determined by the City; failure to neglect or refuse to remove materials; or in the event of a breach of warranty with respect to any materials, workmanship, or performance guaranty. Contractor will not be in default for any excusable delays as provided in Sections 19-21.

The City may give Contractor written notice of such default. If Contractor does not cure such default or provide a plan to cure such default which is acceptable to the City within the time permitted by the City, then the City may terminate this contract for cause.

ii. Proceedings for Relief of Debtors: If a federal or state proceeding for relief of debtors is undertaken by or against Contractor, or if Contractor makes an assignment for the benefit of creditors, then the City may immediately terminate this contract.

- iii. Dishonest Conduct: If Contractor engages in any dishonest conduct related to the performance or administration of this Contract then the City may immediately terminate this contract.
- iv. Cover: In the event the City terminates this contract 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 Contractor 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.
- v. 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 Contract.

34. GENERAL COMPLIANCE WITH LAWS: The Contractor and any subcontractor approved under this Contract 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 Contract 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 Contract is unenforceable or invalid, that provision shall be deemed severed from the Contract, 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 Contract.

35. CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY: During performance of the Contract, the Contractor 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. Contractor, and any subcontractors, 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 contract concerning equal employment, fair employment practices, affirmative action, or prohibitions on discrimination or harassment in employment.

36. CHILD SUPPORT PAYMENTS: By signing the Contract, the Contractor certifies, as of the date of signing the Contract, that the Contractor (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 Contractor is a sole proprietorship, the Contractor's statement applies only to the proprietor. If the Contractor is a partnership, the Contractor's statement applies to all general partners with a permanent residence in Vermont. If the Contractor is a corporation, this provision does not apply.

37. TAX REQUIREMENTS: By signing the Contract, the Contractor certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, that the Contractor 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 Contract.

38. INDEMNIFICATION:

- A. Indemnification by Contractor: Except for the active negligence or willful misconduct of the City, or any of its boards, officers, agents, employees, assigns and successors in interest, Contractor undertakes and agrees to defend, indemnify and hold harmless the City and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and Contractors), damages or liability of any nature whatsoever, for death or injury to any person, including Contractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by Contractor or its subcontractors of any tier.
- B. Notice of Claims & City's Right to Participate: If the City, its officers, agents, or employees are notified of any claims asserted against it to which this indemnification provision may apply, the City shall immediately thereafter notify the Contractor in writing that a claim to which the indemnification provision may apply has been filed. Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The City retains the right to participate, at its own expense, in the defense of any claim, and to approve all proposed settlements of claims to which this provision applies.
- C. City's Rights and Remedies: Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States and the State of Vermont.
- D. No Indemnification by City: Under no conditions shall the City be obligated to indemnify the Contractor or any third party, nor shall the City be otherwise liable for expenses or reimbursement including attorney's fees, collection costs, or other costs of the Contractor or any third party.

39. NO GIFTS OR GRATUITIES: The Contractor 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 Contract.

40. ASSIGNMENT: Contractor shall not sublet or assign this Work, or any part of it, without the written consent of the City. If any subcontractor is approved, Contractor shall be responsible and liable for all acts or omissions of that subcontractor for any Work performed. If any

subcontractor is approved, Contractor shall be responsible to ensure that the subcontractor is paid as agreed and that no lien is placed on any City property.

- 41. TRANSFERS, SUBLETTING, ETC:** The Contractor shall not assign, sublet, or transfer any interest in the work, covered by this Contract, without prior written consent of the City, and further, if any subcontractor participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the City. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the Contractor of responsibility for the performance of that portion of the work so transferred. The form of the subcontractor's contract shall be as developed by the Contractor and approved by the City. The Contractor shall ensure that insurance coverage exists for any operations to be performed by any subcontractor as specified in the insurance requirements section of this Contract.

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

- 42. CONTINUING OBLIGATIONS:** The Contractor agrees that if because of death, disability, or other occurrences, it becomes impossible to effectively perform its services in compliance with the Contract, neither the Contractor nor its surviving members shall be relieved of their obligations to complete the Contract unless the City agrees to terminate the Contract because it determines that the Contractor is unable to satisfactorily execute the Contract.
- 43. INTERPRETATION & IMPLEMENTATION:** Provisions of the Contract shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both Parties.
- 44. ARM'S LENGTH:** This Contract 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 Contractor.
- 45. RELATIONSHIP:** The Contractor is an independent Contractor and shall act in an independent capacity and not as officers or employees of the City. To that end, the Contractor shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Contractor shall provide its own tools, materials, or equipment. The Parties agree that neither the Contractor nor its principal(s) or employees are entitled to any employee benefits from the City. Contractor 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 Contractor agrees to execute any certifications or other documents and provide any certificates of insurance required by the City and understands that this Contract is conditioned on its doing so, if requested.

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

or benefits or be responsible for any unemployment benefits.

- 46. CHOICE OF LAW:** Vermont law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. 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 Contract to the extent capable of execution.
- 47. JURISDICTION:** All suits or actions related to this Contract shall be filed and proceedings held in the State of Vermont.
- 48. BINDING EFFECT AND CONTINUITY:** This Contract 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 Contract during the resolution of the dispute, until the Contract is terminated in accordance with its terms.
- 49. SEVERABILITY:** The invalidity or unenforceability of any provision of this Contract, 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 Contract in accordance with the intent of this Contract.
- 50. ENTIRE CONTRACT & AGREEMENT:** This Contract constitutes the entire Contract, agreement, and understanding of the Parties with respect to the subject matter of this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.
- 51. APPENDICES:** The City may attach to these conditions appendices containing various forms and typical sample sheets for guidance and assistance to the Contractor in the performance of the work. It is understood, however, that such forms and samples may be modified, altered, and augmented from time to time by the City as occasions may require. It is the responsibility of the Contractor to ensure that they have the latest versions applicable to the Contract.
- 52. NO THIRD PARTY BENEFICIARIES:** This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract 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 Contract are incidental to this Contract, and do not create any rights for such third parties.
- 53. WAIVER:** A Party's failure or delay in exercising any right, power, or privilege under this Contract, 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.

Exhibit F:

Burlington Livable Wage Ordinance Certification

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 \$17.44 per hour; and
 - (d) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least \$18.59 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



Livable Wage Ordinance

****EFFECTIVE JULY 1, 2023****

Are You
Receiving
A Livable
Wage?

The Burlington Livable Wage Ordinance requires that if you are working on a specific City of Burlington service contract or subcontract above a certain amount your employer must pay you at least \$17.44 an hour if the employer provides health insurance.

\$17.44

If you are working on a specific City of Burlington service contract or subcontract above a certain amount your employer must pay you at least \$18.59 an hour if the employer does not provide health insurance.

\$18.59

What Are
Your Rights
Under the
Livable Wage?

All employees who work directly on a City of Burlington service contract or a subcontract may be eligible. To find out if you are covered by the Livable Wage Ordinance, you may call the Office of the Clerk/Treasurer at (802) 865-7000, option 1.

Are You
Eligible to
Receive The
Livable Wage?

Covered employees are required to be paid at least the above amounts. If you are covered and your employer reduces your pay, your employer shall be considered in violation. You are protected by law if you assert your rights under the Livable Wage Ordinance. Any employee to whom the Livable Wage has been applied in the past shall not have their wage reduced in FY24 because of this annual adjustment.

Why Report A
Livable Wage
Violation?

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

Employee
Earned
Income Tax
Credit

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

Exhibit G:

Burlington Outsourcing Ordinance Certification

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.

Exhibit H:

Burlington Union Deterrence Ordinance Certification

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.
