



City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

6:00 pm, (begins right after the Local Control Sub-committee Meeting adjourns) Bushor Conference Room, 1st Floor City Hall OR Remotely via ZOOM:

Please click the link below to join the webinar:

<https://zoom.us/j/93976040840>

Or Telephone: +1 646 931 3860 US

Webinar ID: 939 7604 0840

1. Agenda

Subject	1.1. Motion to amend/adopt agenda
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	1. Agenda
Department	Council and Board
Type	Action Procedural
Recommended Action	motion to amend/adopt agenda as follows: add to the agenda item 4.8. Tobacco License Application and Tobacco Substitute Endorsement Application (2023-2024): RGS Nepali Market, 1563 North Avenue

2. Public Comment

Subject	2.1. Verbal Comments
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	2. Public Comment
Department	Council and Board
Type	Information Action Procedural

3. Consent Agenda

Subject	3.1. motion to adopt the consent agenda and take the actions as indicated
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Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	3. Consent Agenda
Department	Clerk/Treasurer's Office
Type	Action (Consent) Procedural
Recommended Action	motion to adopt the consent agenda and take the actions as indicated
Subject	3.2. Communication: BPD, re: Block Party, Drew Street, Friday, June 9, 2023, 5:00 pm - 8:00 pm
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	3. Consent Agenda
Department	Clerk/Treasurer's Office
Type	Action (Consent) Communication Information
Recommended Action	waive the reading, accept the communication and place it on file
Subject	3.3. Communication: BPD, re: Festival of Fools, August 4 - 6, 2023, various times/locations
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	3. Consent Agenda
Department	Clerk/Treasurer's Office
Type	Action (Consent) Communication Information
Recommended Action	waive the reading, accept the communication and place it on file

4. Deliberative Agenda

Subject	4.1. Tobacco License Application (2023-2024): Little Bodega, LLC, d/b/a Henry Street Deli, 11 Henry Street
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Deliberative Agenda
Department	Clerk/Treasurer's Office
Type	Action

Recommended Action	approve the 2023-2024 Tobacco License Application for Little Bodega, LLC, d/b/a Henry Street Deli, 11 Henry Street
Subject	4.2. Special Event Outdoor Entertainment Permit Application (one day only): The Wallflower Collective, 2nd Annual "Wallflower Fest" Anniversary Party in the adjacent/adjoining parking lot, August 20, 2023, 4 pm - 11 pm
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Deliberative Agenda
Department	Clerk/Treasurer's Office
Type	Action
Recommended Action	approve the one day only special event outdoor entertainment permit application for The Wallflower Collective, 2nd Annual "Wallflower Fest" Anniversary Party in the adjacent/adjoining private parking lot, August 20, 2023, 4 pm - 11 pm
Subject	4.3. Special Event Outdoor Entertainment Permit Application (one day only): The Wallflower Collective, September 24, 2023, in the adjoining parking lot (private), LGBTQ "Dyke Day" Queer Organized VT Pride Event, 4 pm - 10 pm
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Deliberative Agenda
Department	Clerk/Treasurer's Office
Type	Action
Recommended Action	approve the one day only special even outdoor entertainment permit application for The Wallflower Collective, September 24, 2023, 4 pm - 10 pm, in the adjoining parking lot (private), LGBTQ "Dyke Day" Queer Organized VT Pride Event
Subject	4.4. 95 Saint Paul Street - Encumbrance Permit Application - Cafe Dim Sum - DPW
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Deliberative Agenda
Department	Clerk/Treasurer's Office
Type	Action
Recommended Action	to approve and recommend that the City Council approve the Encumbrance Application for Café Dim Sum at 95 Saint Paul Street requesting use of the sidewalk for an outdoor seating area and to further recommend that the City Council authorize the Mayor to enter into a license agreement with the Applicant for use of the portion of the right-of-way outlined in the Application, subject to review by the City Attorney's Office
Subject	4.5. Birdseye Building Company - 288 Maple Street - Encumbrance Permit Application - DPW

Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Deliberative Agenda
Department	Clerk/Treasurer's Office
Type	Action
Recommended Action	to approve and recommend that the City Council approve the Encumbrance Application for Birdseye Building Company requesting use of the public right-of-way for construction related parking as detailed in Attachment C, and to further recommend that the City Council authorize the Mayor to enter into a license agreement with the Applicant for use of the portion of the right-of-way outlined in the Application, subject to review by the City Attorney's Office
Subject	4.6. Burlington Bike Share Encumbrance Application - Bird Rides Inc. - DPW
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Deliberative Agenda
Department	Clerk/Treasurer's Office
Type	Action
Recommended Action	to approve and recommend that the City Council approve the Encumbrance Application for Bird Rides Inc. requesting use of public right of way space for an electric bike fleet, and to authorize the Mayor to execute the attached Encumbrance Permit and License Agreement, subject to review by the City Attorney's Office
Subject	4.7. Whiting-Turner Encumbrance Application - Burlington High School - DPW
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Deliberative Agenda
Department	Clerk/Treasurer's Office
Type	Action
Recommended Action	to approve and recommend that the City Council approve the Encumbrance Application for Whiting-Turner requesting to occupy a portion of public right-of-way on North Avenue and Institute Road as detailed in Attachment C, and to further recommend that the City Council authorize the Mayor to enter into a license agreement with the Applicant for use of the right-of-way outlined in the Application, subject to review by the City Attorney's Office
Subject	4.8. Tobacco License Application and Tobacco Substitute Endorsement Application (2023-2024): RGS Nepali Market, 1563 North Avenue
Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Deliberative Agenda
Department	Clerk/Treasurer's Office

Type	Action
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5. Adjournment

Subject

5.1. Motion to adjourn

Meeting	June 14, 2023 - City Council License Committee Meeting - Wednesday, June 14, 2023, 6:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
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Category	5. Adjournment
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Department	Council and Board
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Type	Action Procedural
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Recommended Action	motion to adjourn
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PERMIT

Pursuant to City Ordinance 27-6

75 JUN 5 PM 10:25

DATE: Friday, June 9, 2023

TIME: 5:00PM-8:00PM

LOCATION: Drew Street, between Ward & Strong Streets

EVENT: Block Party

COORDINATOR: Sarah Kenney 802-310-7220

PERMIT ISSUED BY **POLICE** DEPARTMENT ON 5-22-23

SIGNATURE OF DEPARTMENT REPRESENTATIVE: Michael Henry #321
Lieutenant Mike Henry

ADDITIONAL INFORMATION:

- Appropriate barricades will be in place at either end of the street to redirect traffic and that are readily removable for emergency vehicles.
- Neighbors will be notified of the block party.
- Must obtain a waiver form signed by at least 3/4 of the block residents who thereby waive their right of normal access to the street for the period of the block party.
- No alcohol will be dispensed or consumed on public property.
- No live bands.
- Amplified sound to be controlled so as to not carry beyond the property lines of houses adjacent to the block where the party is being held.
- There shall be no more invited guests than the number of block residents in attendance.
- Participants will comply with all local, State, and Federal laws.
- Shall be responsible for cleanup after the event.

I, the undersigned, hereby certify that the foregoing is a true and accurate representation. Any false statement herein may result in revocation of this permit. I acknowledge that failure to abide by the above conditions can result in this permit being revoked.

SIGNATURE  Sarah Kenney

PHONE 802-310-7220

ADDRESS 10 Ward Street, Burlington

Copies to:

20 JUL 5 AM 10/25

'23 JUN 7 PM 1:12



PERMIT

Pursuant to City Ordinance 27-6

DATE of EVENT: August 4, 2023
DATE of EVENT: August 5, 2023
DATE of EVENT: August 6, 2023

TIME: 12:00pm to 10:00pm
TIME: 11:00am to 10:00pm
TIME: 10:00am to 7:00pm

LOCATION: Church Street Marketplace, from Main Street to Pearl Street, to include City Hall Park

EVENT: Festival of Fools – Street Event

ORGANIZATION: Burlington City Arts

COORDINATOR: Zach Williamson

ADDRESS/CONTACT INFO: 135 Church Street Burlington, VT; (802) 846-2523

PERMIT ISSUED BY **POLICE DEPARTMENT**. DATE 5/31/2023

SIGNATURE OF DEPARTMENT REPRESENTATIVE: Lt. Michael Henry #321
Lieutenant Mike Henry

ADDITIONAL INFORMATION/CONDITIONS:

- An approved security company will be hired to check the identification documents of the event attendees and assist with crowd control and / or potential evacuation.
- Each person serving alcohol or providing security for the event will have completed the DLC "Liquor Seminar" and will be clearly identified by uniform or placard as an employee or volunteer for the event.
- In the event of an emergency the group will have designated volunteers or private security employees to notify the guests of the pre-planned evacuation strategy and staging locations.
- Event will notify affected businesses/residents of intended street closure no later than July 14, 2023.
- Event will comply with all local, State, and Federal laws.
- Event & Organizer will be responsible for and agree to pay for police services to include:
 - August 4, 2023 Security from 7pm to 10pm – **1 Burlington Police Officer located on Church Street Marketplace/City Hall Park**
 - August 5, 2023 Security from 3pm to 10pm – **1 Burlington Police Officer located on Church Street Marketplace/City Hall Park**
 - August 6, 2023 Security from 3pm to 7pm – **1 Burlington Police Officer located on Church Street Marketplace/City Hall park**
- Event shall obtain a permit from the Church Street Marketplace and shall follow all conditions set forth.
- Event shall notify Burlington Fire & Rescue of pending road closure to include specific dates and times.
- Event shall notify Burlington Parks Department of their intentions within City Hall Park and follow all conditions set forth.

- Event shall notify Burlington Police Parking Division of intended street closure and meters will be posted in accordance with ordinances. Signs must be posted by 6pm the night before they are to be valid.
- Must obtain outdoor consumption permits from DLC/Local Control Committee.

I, the undersigned, hereby certify that the foregoing is a true and accurate representation. Any false statement herein may result in revocation of this permit. I acknowledge that failure to abide by the above conditions can result in this permit being revoked.

SIGNATURE Zach Williamson DATE 06-07-23 PHONE 917-488-2738

ADDRESS 135 Church St, Burlington, VT 05401

Copies to:

- Operations Deputy Chief
- Roll Call Copy
- Posted Uniformed Services
- City Council
- City Attorney
- City Clerk
- Park's Department
- DPW
- Fire Department

2023 JUN 7 PM 7:12



Home (/DLLLicenseManagment/s/)

Application
DLL - Application - 28393

Approve

Reject

Applicant Action Required

Town Payment Received

Download

APPLICATION DETAILS

RELATED INFORMATION

✓ Application Information

DLL - Application Id

DLL - Application - 28393

External Status

Application sent to municipality

Business Entity Name

Little Bodega LLC

Town Clerk/ Municipal Jurisdiction

Burlington

Phone number:

Historical Id

TOBC

Applicant Email

jordan.lewis.90@gmail.com (<mailto:jordan.lewis.90@gmail.com>)

Application Type **1**

License

Renewal Application

Application For

Tobacco License

Applicant Action Comments

Town User Approval/Rejection Comments

License/Permit Location Description

Eligibility of Tobacco Fee waiver

Yes

Town Fee

0

Business Entity Phone

8023809987

✓ Location Details

Physical Location Name **1**

Henry Street Deli Mart

Physical Location City/Town

Burlington

Physical Location Street 1

11 Henry Street

Physical Location State

Vermont

Physical Location Street 2/Unit/Suite

Physical Location Zip

05401



Fee \$25.00

May 1, 2023 ---- April 30, 2024

**CITY OF BURLINGTON
SPECIAL EVENT
ENTERTAINMENT PERMIT APPLICATION**

☐ Indoor

☒ Outdoor

**PART I
ORGANIZATION**

All information in this section is required

1. Corporation/Sole Proprietor name The Wallflower Collective
2. D/B/A (Business Name) _____ 3. Bus. Phone 843-532-0525
4. Business Address 71 S. Union St. #4 Burlington, VT 05401
5. Mailing Address 71 S. Union St. #4 Burlington, VT 05401
6. Contact person Lauren McKenzie 7. Contact Phone 843-532-0525
8. Email contact address laurenmcKenzie7@gmail.com

**PART II
OPERATION**

1. Do you currently have a Liquor License? Yes or No
2. Do you currently have an Entertainment Permit/Special Event Permit? Yes or No
3. Proposed Date(s) for this Special Event August 20th, 2023
4. Proposed Hours for this Special Event 4pm - 11pm
5. Proposed Location for this Special Event Specify if event will be on City street or right-of-way
2nd annual "Wallflower fest" anniversary party
in the adjacent/adjoining private parking lot

For this Proposed location please answer the following questions:

- a) Occupancy Load 950 b) # of Restrooms 7 c) # of Egresses outdoors
d) Date of last Fire/Safety Check 6/5/23 e) Dancing by Patrons? Yes or No
f) Amplified Music? Yes or No g) Will additional staff and/or security be required? Yes or No

*pdchk # 938
\$50.00 to 6/8/23*

(Continued on back)

**PART III
DESCRIPTION OF ENTERTAINMENT**

Please give DETAILED description of the type of entertainment for which you are applying:

Description live music afternoon/evening festival hosting
local & touring bands in adjoining parking lot. The event
will be ticketed, 21+, w/ fenced perimeter, built stage,
projected music, to end sharply by 11pm or before.
Additional bathrooms & security will be hired. Neighboring
businesses will be open & included in the event.
Gross Queen & Folinos.

STATEMENT OF APPLICANT: Under the pains and penalties of perjury, I affirm that the preceding answers are true to the best of my knowledge and belief. I have read, understand and agree to comply with all City and State conditions, laws, ordinances, regulations and statutes.

DATE SIGNED: _____

SIGNATURE OF APPLICANT _____

PRINT NAME: _____

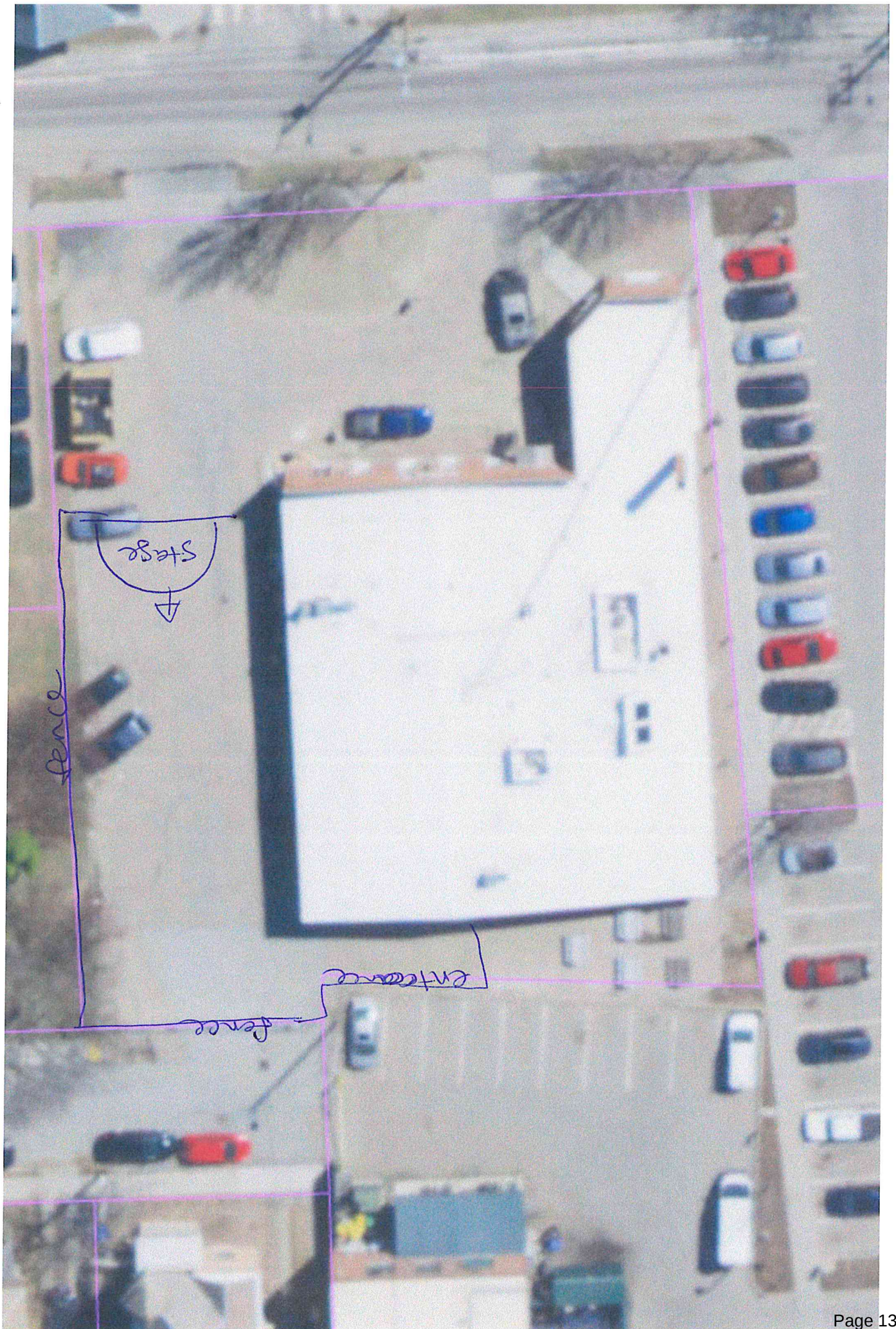
RELATIONSHIP TO BUSINESS _____

OFFICE USE ONLY

Fee Paid \$ _____ Date: _____ Fee Returned \$ _____ Date: _____

At their meeting of _____, the Burlington City Council License Committee recommended
 Approval _____ Denial _____

At their meeting of _____, the Burlington City Council _____ this SPECIAL
 entertainment permit application.



Lori Olberg

From: Lauren McKenzie <laurenmckenzie7@gmail.com>
Sent: Wednesday, June 7, 2023 1:07 PM
To: Lori Olberg
Subject: Wallflower Request for Permits - Aug 20th, Sept 24th
Attachments: Inspection BFD-2023-0000358.pdf; Summer Block Party Permits.pdf

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hello!

Hope you're doing well! I just met with the Fire Marshal this week to renew our fire permit (attached to this email) So, I would love to get the ball rolling with these 2 parking lot parties to get before city council as soon as possible :) I'm assuming I'll need to renew my catering license (it expires before the events) and put in a request to cater, should that be done through the DLL or through you with the city?

I have received approval for the events from our landlord and the other business within our building. (who mostly plan to be a part of the events) I also sent out 23 letters to the houses neighboring our parking lot to pre-emptively address any concerns and invite folks to enjoy the parties for free. We are surrounded overwhelmingly by student housing, but we did receive one reply about the potential parties. I assured them that all outdoor music would cease at the times requested in the attached permits, and offered to put them up at the Hotel Vermont for the evening if they'd prefer to avoid the noise altogether. They said that would not be necessary and we came to a very kind and generous understanding of the intended events which they plan to enjoy with us. We are very much looking forward to hosting more arts and live music in Burlington. :)

Thanks for the help!
-Lauren McKenzie @The Wallflower Collective
Be Well!



Fee \$25.00

May 1, 2023 ---- April 30, 2024

**CITY OF BURLINGTON
SPECIAL EVENT
ENTERTAINMENT PERMIT APPLICATION**

☐ Indoor

☒ Outdoor

**PART I
ORGANIZATION**

All information in this section is required

1. Corporation/Sole Proprietor name The Wallflower Collective
2. D/B/A (Business Name) _____ 3. Bus. Phone 843-532-0525
4. Business Address 71 S. Union St #4 Burlington, VT 05401
5. Mailing Address _____
6. Contact person Lauren McKenzie 7. Contact Phone 843-532-0525
8. Email contact address lauren.mckenzie7@gmail.com

**PART II
OPERATION**

1. Do you currently have a Liquor License? Yes or No
2. Do you currently have an Entertainment Permit/Special Event Permit? Yes or No
3. Proposed Date(s) for this Special Event Sept. 24th, 2023.
4. Proposed Hours for this Special Event 4pm-10pm.
5. Proposed Location for this Special Event Specify if event will be on City street or right-of-way
in adjoining parking lot (private) LGBT "Pride Day" Queer organized VTPride event.

For this Proposed location please answer the following questions:

- a) Occupancy Load 950 b) # of Restrooms 5 c) # of Egresses outdoors
d) Date of last Fire/Safety Check 6/5/23 e) Dancing by Patrons? Yes or No
f) Amplified Music? Yes or No g) Will additional staff and/or security be required? Yes or No

*pdmk #936
\$50.00 do 6/8/23*

(Continued on back)

PART III DESCRIPTION OF ENTERTAINMENT

Please give DETAILED description of the type of entertainment for which you are applying:

Description In conjunction with our monthly occurring
"Dyke Night" events, we aim to host a "Dyke Day"
parking lot take over in which we host local & touring
queer bands during VT pride month. The event will
be 21+, w/ additional security & bathrooms, projected
music & secured/fenced perimeter. All outdoor
music to end @ 10pm or before

STATEMENT OF APPLICANT: Under the pains and penalties of perjury, I affirm that the preceding answers are true to the best of my knowledge and belief. I have read, understand and agree to comply with all City and State conditions, laws, ordinances, regulations and statutes.

DATE SIGNED: _____

SIGNATURE OF APPLICANT _____

PRINT NAME: _____

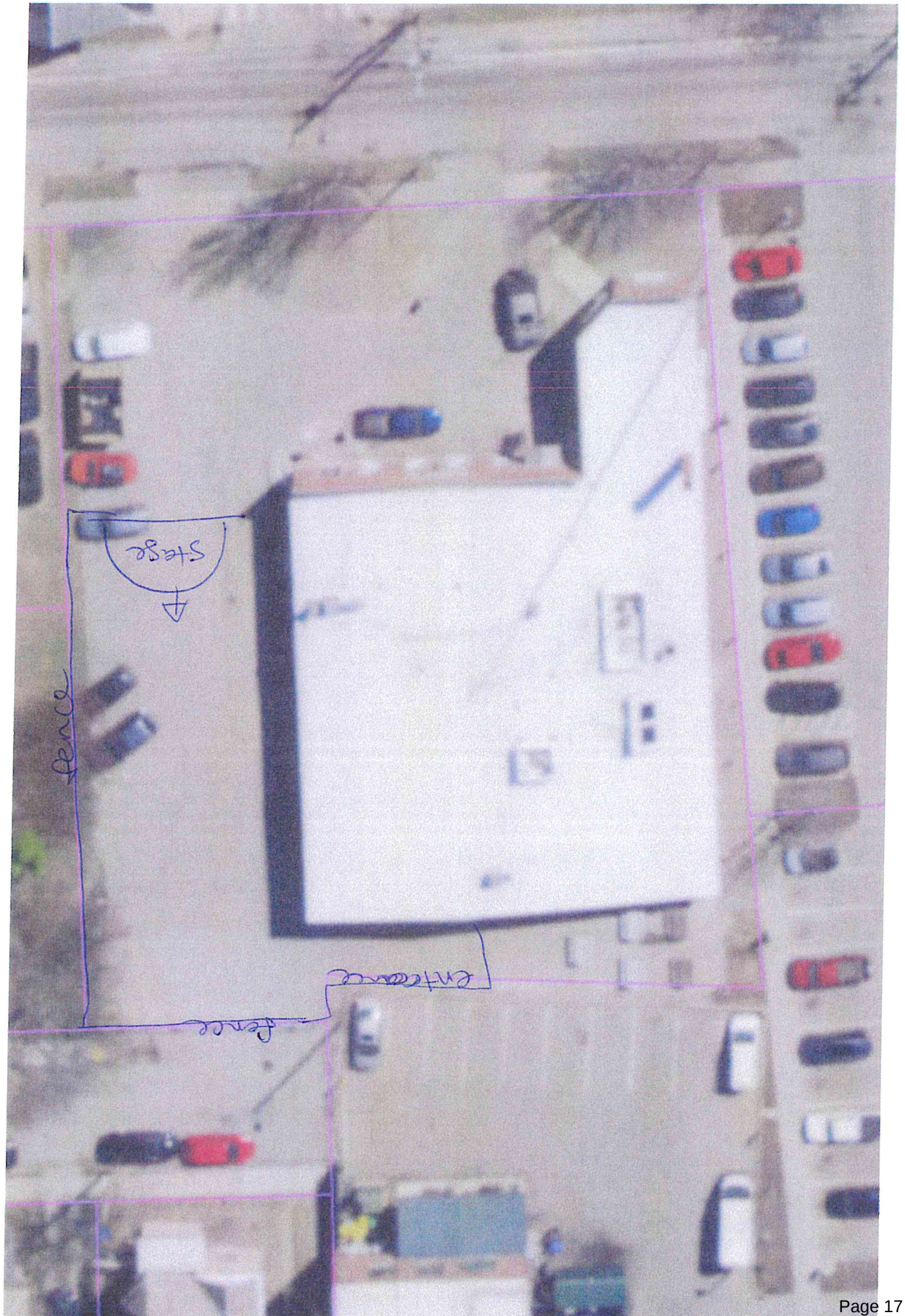
RELATIONSHIP TO BUSINESS _____

OFFICE USE ONLY

Fee Paid \$ _____ Date: _____ Fee Returned \$ _____ Date: _____

At their meeting of _____, the Burlington City Council License Committee recommended
 Approval _____ Denial _____

At their meeting of _____, the Burlington City Council _____ this SPECIAL
 entertainment permit application.



Lori Olberg

From: Lauren McKenzie <laurenmckenzie7@gmail.com>
Sent: Wednesday, June 7, 2023 1:07 PM
To: Lori Olberg
Subject: Wallflower Request for Permits - Aug 20th, Sept 24th
Attachments: Inspection BFD-2023-0000358.pdf; Summer Block Party Permits.pdf

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hello!

Hope you're doing well! I just met with the Fire Marshal this week to renew our fire permit (attached to this email) So, I would love to get the ball rolling with these 2 parking lot parties to get before city council as soon as possible :) I'm assuming I'll need to renew my catering license (it expires before the events) and put in a request to cater, should that be done through the DLL or through you with the city?

I have received approval for the events from our landlord and the other business within our building. (who mostly plan to be a part of the events) I also sent out 23 letters to the houses neighboring our parking lot to pre-emptively address any concerns and invite folks to enjoy the parties for free. We are surrounded overwhelmingly by student housing, but we did receive one reply about the potential parties. I assured them that all outdoor music would cease at the times requested in the attached permits, and offered to put them up at the Hotel Vermont for the evening if they'd prefer to avoid the noise altogether. They said that would not be necessary and we came to a very kind and generous understanding of the intended events which they plan to enjoy with us. We are very much looking forward to hosting more arts and live music in Burlington. :)

Thanks for the help!

-Lauren McKenzie @The Wallflower Collective
Be Well!



**CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS**

645 Pine Street, Suite A
Post Office Box 849
Burlington, VT 05402-0849
802.863.9094 VOX
802.863.0466 FAX
802.863.0450 TTY
www.burlingtonvt.gov

MEMORANDUM

TO: License Committee/City Council

FROM: Caleb Manna, Excavation Inspector, Department of Public Works

DATE: June 14, 2023

CC: Norman Baldwin, P.E. Assistant Director of Public Works/City Engineer
Chapin Spencer, Director of Public Works.
Laura Wheelock, P.E.; Sr. Public Works Engineer

RE: 95 Saint Paul Street– Encumbrance Permit Application – Café Dim Sum

Request

The Applicant, Café Dim Sum, owner of the establishment located at 95 Saint Paul Street, is requesting approval for an outdoor seating area to exist in the public right-of-way. The request, if approved, will formally permit an outdoor seating area on the sidewalk, for the establishment, through a License Agreement with the City.

As stated in Burlington Code of Ordinance Chapter 27-32(a): *"No permit as required by Section 27-31 shall be for longer than sixty (60) days, except as authorized by the city council."*

Overview

Café Dim Sum Inc., submitted an encumbrance application to the Department of Public Works on May 18, 2023, requesting to occupy 80 square feet of public right-of-way space on Saint Paul Street, adjacent to their establishment.

The proposed seating area will occupy the sidewalk adjacent the establishment in front of the ground-floor window. The seating area meets all the requirements to occupy the public right-of-way under the Great Streets Standards and Street Seating Program. The dining area will consist of small tables and chairs, and the seating area will be defined by bordering stanchions and flower pots around the perimeter.

The outdoor dining area will be used by the restaurant during normal business hours of operation. During times when the establishment is closed, tables and chairs will be removed from the public right-of-way.

Applicant will be responsible for any future maintenance or repairs and any other conditions under the License Agreement.

Recommendation

The Department of Public Works is supportive of entering into a License Agreement between the Applicant and the City.

Thank you for consideration of this request. Please do not hesitate to contact me directly at CManna@burlingtonvt.gov or 802-865-7562.

Attachment

- A. Application
- B. DPW Recommendation Form
- C. Photographs
- D. Certificate of Insurance

Motions:

License Committee:

"To approve and recommend that the City Council approve the Encumbrance Application for Café Dim Sum at 95 Saint Paul Street requesting use of the sidewalk for an outdoor seating area and to further recommend that the City Council authorize the Mayor to enter into a license agreement with the Applicant for use of the portion of the right-of-way outlined in the Application, subject to review by the City Attorney's Office."

City Council:

"To approve the Encumbrance Application for Café Dim Sum at 95 Saint Paul Street requesting use of the sidewalk for an outdoor seating area and authorize the Mayor to enter into a license agreement with the Applicant for use of the portion of the right-of-way outlined in the Application, subject to review by the City Attorney's Office."

ENCUMBRANCE PERMIT AND LICENSE AGREEMENT

Café Dim Sum
95 Saint Paul Street, Burlington VT

This Long-term Encumbrance Permit and License Agreement (“Agreement”) is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont (“City”), and Café Dim Sum Inc., a Vermont corporation located at 95 Saint Paul Street, Suite 120, Burlington, Vermont 05401 (“Licensee”). The City and Licensee agree to the terms and conditions of this Agreement.

1. RECITALS

- A. Authority.** Authority to enter into this Agreement exists in the City Charter and Burlington City Ordinance 27-32. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- 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. Background.** The City owns property, including the street and sidewalk right-of-way adjacent to 95 Saint Paul Street. The Licensee has received approval to install an outdoor seating area on the sidewalk of the public right-of-way adjacent to the premises.
- D. Purpose.** This Agreement sets forth the terms and conditions for the allowed use of the public right-of-way.

2. EFFECTIVE DATE AND TERM

- A. Effective Date.** Once executed by both parties 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 for any performance before the Effective Date or after the expiration or termination of this Agreement.
- B. Term.** This Agreement shall commence on the Effective Date and expire on April 30, 2024.
- C. Termination.** This Agreement may be terminated as set forth in this §2.C. Upon termination, Licensee shall remove—at its own expense—all objects, materials, and other obstructions placed on the Premises. If Licensee refuses to promptly remove such obstructions, the City may remove all such obstructions and the Licensee shall be liable for all expenses of such removal.
 - i. Discontinued Use.** The City shall have the exclusive right to immediately terminate this Agreement should Licensee or a subsequent owner discontinue the licensed use of the premise.
 - ii. Termination for Convenience.** At any time prior to completion of services specified under this Agreement, the City may terminate the Agreement for any reason by submitting written notice via certified or registered mail to the Licensee, not less than fifteen (15) days prior to the termination date, of its intention to do so. The Licensee shall make no claim against the City by reason of such termination.
 - iii. Breach.** The City shall have the exclusive right to terminate this Agreement if Licensee is in breach of this Agreement. The City shall provide 7 days written notice in advance of the termination date.

- iv. **Non-Compliance.** If any of the License Conditions are not met to the satisfaction of the City, the Licensee will be responsible for restoration of the sidewalk adjacent to the property within 7 days of receiving written notice.
- v. **Renewal.** This agreement shall be renewable annually for a one-year term provided that licensee submits an annual renewal application certifying that its renewal does not amend, modify or otherwise change the existing agreement, pays the requisite fees, and provides updated proof of insurance and all applicable endorsements, and provided that the Department of Public Works certifies that licensee is still in compliance with terms of this agreement.

3. DEFINITIONS

- A. **“Effective Date”** means the date on which this Agreement is approved and signed by the City as shown on the signature page of this Agreement.
- B. **“Encumbrance Fee”** means the sum of the encumbrance application fee, and the square foot use fee annually set by the City.
- C. **“Party”** means the City or Licensee and **“Parties”** means both the City and Licensee.
- D. **“Premises”** means the sidewalk directly in front of 95 Saint Paul Street.
- E. **“Property”** means the outdoor seating area that is the subject of this Agreement.

4. GRANT OF LICENSE

The City hereby grants to Licensee a license to install an outdoor seating area for dining purposes on the sidewalk directly adjacent to 95 Saint Paul Street, totaling an area of 80 square feet for the term set forth in §2.B of this Agreement. Licensee may use and maintain the outdoor seating area existing in the City’s right-of-way and must be maintained and placed exactly as described in the plan approved by the Department of Public Works, which is attached hereto as Attachment C.

5. LICENSE CONDITIONS

- A. **Maintenance.** Licensee shall maintain the outdoor seating to the satisfaction of the City, which includes maintaining it in a safe, proper, and working condition. Licensee shall be solely responsible for all costs associated with maintenance, upkeep, and repair of the outdoor seating amenity.
- B. **Placement.** The featured seating shall be placed and maintained in accordance with all conditions set by the Department of Public Works in the approved plan (Attachment C) and shall not impede the City’s or any other private or public utilities’ ability to maintain the road, sidewalk, parking meters, greenbelt, utility infrastructure, or any other City or private property. The amenity shall not cause an obstruction or inconvenience to members of the public accessing the road, sidewalk, parking meters, greenbelt or any other City or private property. The seating area shall be removed from the public right of way when not in use by the establishment.
- C. **Appearance.** Licensee shall pick up and sweep debris created by its use of the public right-of-way.
- F. **Emergency Access.** In the event of an emergency relating to municipal operations, the City shall

have the authority to remove or relocate the amenity to access any public infrastructure deemed necessary. License shall be solely responsible for all cost associated with relocation of seating area, and returning the structure the approved location in this agreement.

6. PAYMENT FOR LICENSE

- A. License Fee.** Licensee shall pay the City an encumbrance fee, as described in Attachment A.
- B. Initial License Fee.** By signing this Agreement, the Parties acknowledge that Licensee has paid the City the licensee fee for the period beginning April 30, 2023 and ending April 30, 2024.

7. INSURANCE

- A. Requirement.** Licensee shall maintain throughout the term of this Agreement, and any subsequent extension or renewals, comprehensive public liability insurance with an A or better rated insurance carrier, qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted by this Agreement in an amount not less than \$1,000,000 each occurrence. The City shall be named as an additional insured on such insurance policy.
- B. Evidence.** Prior to execution of this Agreement, Licensee shall furnish the City with a certificate of insurance and endorsement that includes the provision naming the City as an additional insured. Licensee shall also furnish the City with an endorsement indicating that Licensee shall be given 15 days' written notification prior to cancellation of such insurance for nonpayment of premium and 45 days' written notice for any other reason. Licensee shall take all reasonable efforts to acquire an endorsement providing the City with 10 days' written notification prior to cancellation of such insurance for nonpayment of premium and 30 days' written notification for any other reason. If such endorsement is not reasonably available then Licensee shall provide the City with notification of any impending cancellations within three days after receipt of such notice from its insurance carrier. The current certificate of insurance and applicable endorsements are attached to this Agreement as Attachment D.
- C. Continuing Obligation.** Licensee shall provide the City with an updated certificate of insurance and applicable endorsements annually on or before the certificate's stated expiration. It is the responsibility of Licensee to ensure that a current certificate of insurance is on file with the City at all times.

8. INDEMNIFICATION

Licensee shall indemnify, defend, and hold harmless the City, its officers, officials, agents, and employees from liability for any claims, suits, expenses, losses, judgments, and damages arising as a result of the Licensee's acts and/or omissions, and the acts and/or omissions of Licensee's officers, directors, employees, agents, contractors, and subcontractors on or related to Licensee's use of the Premises or in connection with this Agreement or the rights granted to it under this Agreement. If the City, its officers, officials, 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 Licensee in writing that a claim to which the indemnification provision may apply has been received. Licensee 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. Under no conditions shall the City be obligated to indemnify the Licensee 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 Licensee or any third party.

9. RESPONSIBILITY FOR SUPERVISION:

Licensee shall assume responsibility for general supervision of its contractors and any subcontractors, shall be solely responsible for all procedures, methods, and work, and shall be responsible to the City for all acts or omissions of its officers, employees, agents, contractors, subcontractors, or any other person related to any activity or work performed in connection with this Agreement or the rights granted to Licensee under this Agreement.

10. PUBLIC RELATIONS

Throughout the performance of the work, the Licensee will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Licensee shall conduct themselves with propriety.

11. PERMITS

Licensee shall be responsible for obtaining all necessary City and/or State permits prior to performing any work on the Premises or in connection with this Agreement.

12. NUISANCES PROHIBITED

Licensee shall not—during the term of this Agreement—on or in the Premises, maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable City ordinance, State or Federal statute, or controlling law, regulation, or condition imposed whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement.

13. INSPECTION OF WORK

The City shall, at all times, have access to the Premises for the purposes of inspection and the Licensee shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Licensee 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 Licensee.

14. ASSIGNMENT OF RIGHTS

If Licensee sells the Property, Licensee may temporarily assign the rights granted herein to the new owner of the Property for a period of 60 days after closing. Any subsequent owner of the Property shall execute a new agreement with the City and provide proof of insurance within the 60 day period. Failure to comply with this §14 shall constitute a discontinued use under §2.C.i of this Agreement.

15. LIMITATION OF RIGHTS

Licensee acknowledges that no property interest or other right is created other than that specifically defined and limited by this Agreement.

16. WAIVER

The City'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. Waiver by the City may only occur through an expressed written waiver signed by an authorized representative of the City. No waiver of a breach of any of the covenants, agreements, or provisions contained in this Agreement shall be

construed to be a waiver of any subsequent breach of the same or of any other provision in this Agreement.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement. All prior representations and understandings related to Licensee's use of the specified portions of the City's right-of-way, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

18. MODIFICATION

Modifications to this Agreement shall only be valid if agreed to in a formal written amendment to this Agreement, properly executed and approved by the Parties.

19. THIRD PARTY BENEFICIARIES

This Agreement does not 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 right for such third parties.

20. ATTACHMENTS

The following attachments are adopted, incorporated by reference, and made part of this Agreement:

- A. Attachment A:** Licensee's Application
- B. Attachment B:** Department of Public Works Encumbrance Recommendation Form
- C. Attachment C:** Photographs and Sketches of Encroachment
- D. Attachment D:** Certificate of Insurance

21. ORDER OF PRECEDENT

This Agreement shall control over any conflicting attachment.

— *Signature Page Follows* —

22. SIGNATURE PAGE

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.

The Parties hereto have executed this Agreement

LICENSEE
Si Lai
Cafe Dim Sum Inc.

By: _____
Si Lai

Date: _____

CITY OF BURLINGTON
Mayor Miro Weinberger

By: _____
Mayor Miro Weinberger
Duly Authorized

Date: _____

EX-A



City of Burlington, VT

05/25/2023

REN-23-13**ROW Encumbrance Permit****Status:** Active**Date Created:** May 18, 2023**Applicant**

Si Lai
si707707@yahoo.com
548 Country Club Drive
South Burlington, VT 05403
802-734-6832

Primary Location

95 Saint Paul Street
Burlington, VT 05401

Owner:

INVESTORS CORPORATION OF VT
30 MAIN STREET 401 BURLINGTON, VT
054018418

Right-of-Way Encumbrance Application**Type of Encumbrance Requested**

Seating / Sign / Structure / Amenity
Encumbrance

Renewal ?

No

Encumbrance Description

Outdoor seating for Cafe Dim Sum. We are applying to put 4 tables in front of Cafe Dim Sum between the building facade and sidewalk. We have received permission and support from the building owner ICV.

Location of Encumbrance

95 Saint Paul Street

The length of Long-Term Encumbrances (years) are negotiated on a case-by-case basis, and may be renewed at the request of the applicant.

Encumbrance Start Date

06/15/2023

Encumbrance End Date

10/01/2023

Area Encumbered (Square Feet)

80

Number of Tables

4



DEPARTMENT OF PUBLIC WORKS
645 PINE STREET
BURLINGTON, VT 05401
Voice: (802) 863-9094 Ext 3 Fax: (802) 863-0466
Email: dpwpinecustomerservice@burlingtonvt.gov

EX-B

DPW ENCUMBRANCE RECOMMENDATION FORM

DBA NAME: _____ DATE: 5/25/2023
COMPANY NAME: Cafe Dim Sum PHONE: 802-734-6832
CONTACT NAME: Si Lai (Sam) EMAIL: si707707@yahoo.com
MAILING ADDRESS: 548 Country Club Drive, South Burlington VT 05403
LOCATION OF ENCUMBRANCE: 95 Saint Paul Street

FOR LONG-TERM ENCUMBRANCE, TABLE AND CHAIR ENCUMBRANCE, AND CONSTRUCTION ENCUMBRANCE

1. All encumbrances should be located on private property, if possible. In the opinion of the Excavation Inspector, is there an available alternative location for the requested encumbrance on private property?

YES []

NO ☒

2. Will there be sufficient width for plows, pedestrian access, and ADA requirements if the proposed encumbrance is added to the sidewalk/roadway/greenbelt?

YES ☒

NO []

3. Additional Comments: _____
Outdoor seating for Cafe Dim Sum at 95 Saint Paul. Seating area will
directly in front of the establishment. Tables and chairs.

4. Has this business remained in compliance to date (RENEWALS ONLY)?

YES []

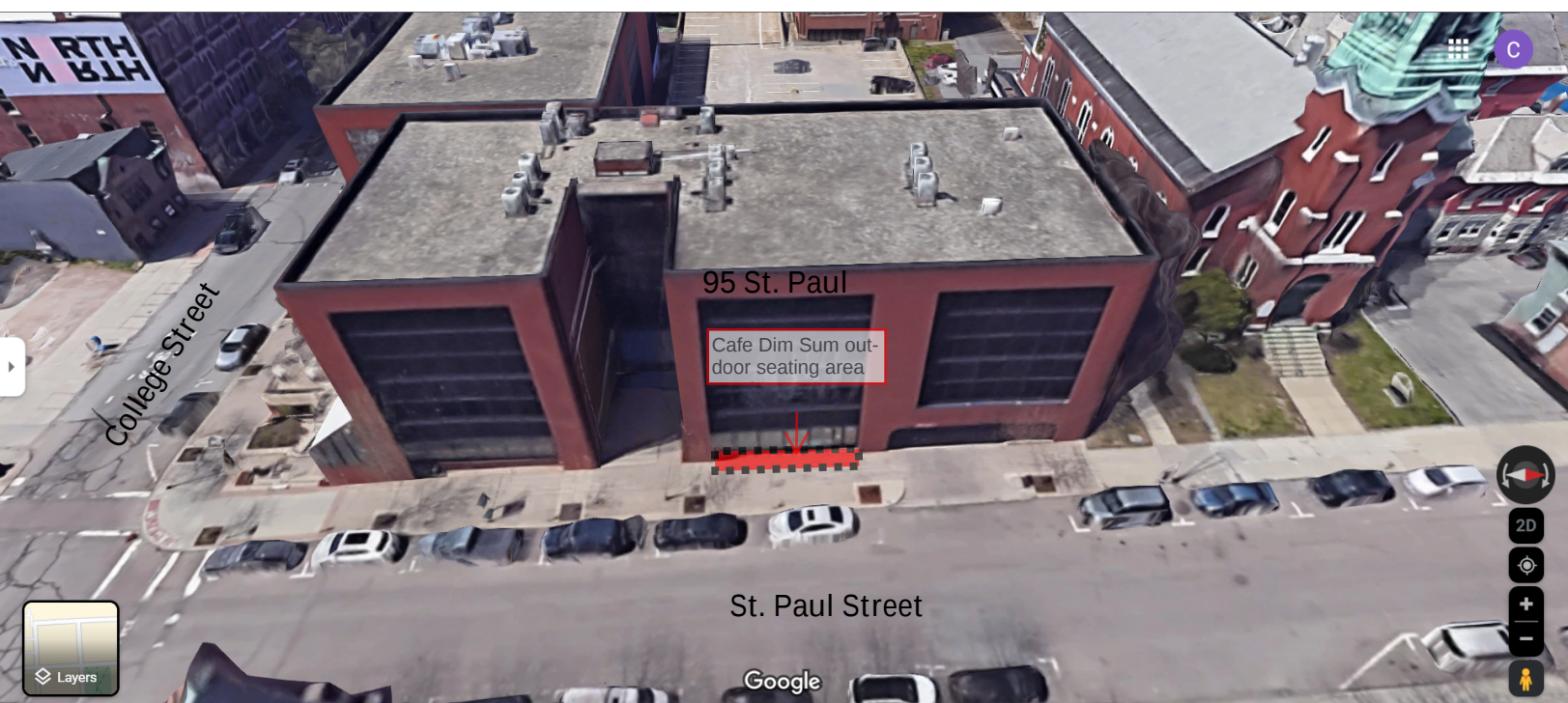
NO []

5. Describe the encumbrance, including square footage and location of items: _____
80 sq. ft. 5' min clear sidewalk path maintained, widening to 10'
in front of seating area.

BELOW THIS LINE – DEPARTMENT OF PUBLIC WORKS OFFICE USE ONLY

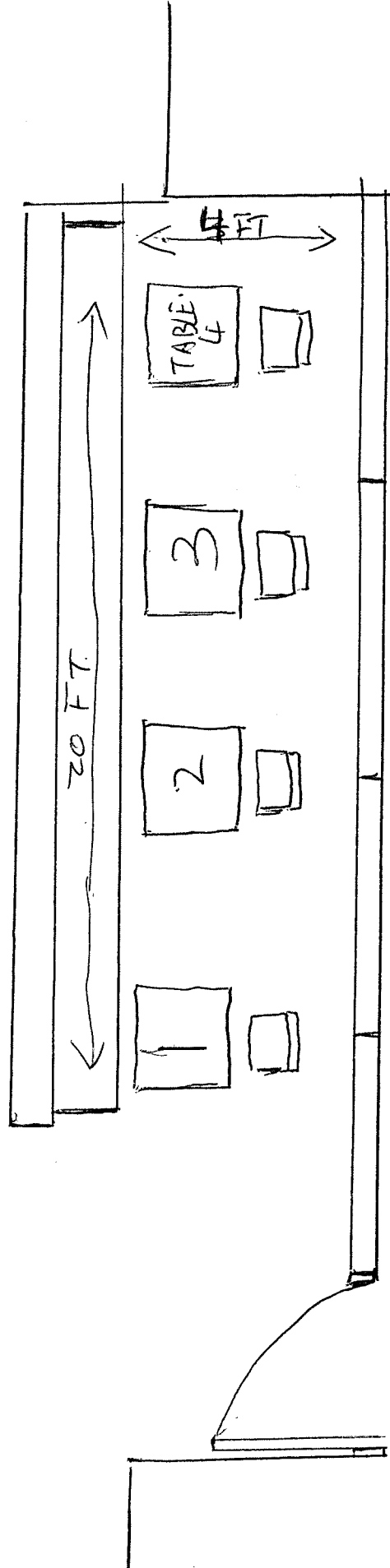
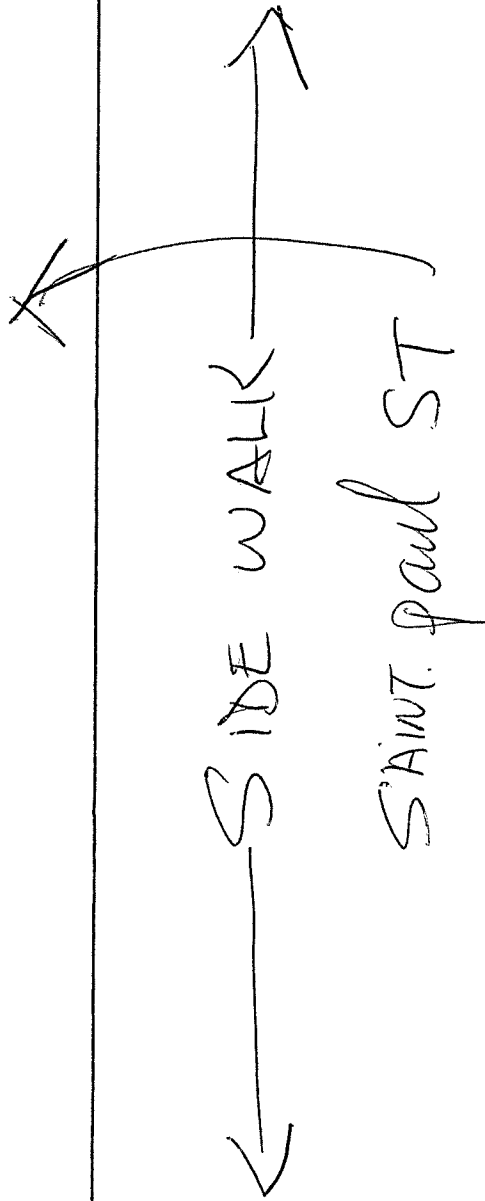
Approved: Yes ☒ No [] If no, reason: _____
Signature: Caleb Manna Date: 5/25/2023

EX-C



Seating area is 4'x20' and will extend 2' onto sidewalk from face of building.

ROAD



CAFE DIM SUM



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/18/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Richards Group 48 Harris Place PO Box 820 Brattleboro VT 05302	CONTACT NAME: Kim Bergeron PHONE (A/C, No, Ext): (802) 254-6016 E-MAIL ADDRESS: kbergeron@therichardsgroup.com FAX (A/C, No): (802) 254-7110	
EX-D INSURED Cafe Dim Sum Inc 548 Country Club Dr South Burlington VT 05403-5882	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Co-Operative Insurance Co	18686
	INSURER B: Sequoia Insurance Co	22985
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES**CERTIFICATE NUMBER:** 22/23 Master COI**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y		BOP3018235	10/01/2022	10/01/2023	EACH OCCURRENCE \$ 1,000,000	
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000							
	MED EXP (Any one person) \$ 5,000							
	PERSONAL & ADV INJURY \$ 1,000,000							
							GENERAL AGGREGATE \$ 1,000,000	
							PRODUCTS - COMP/OP AGG \$ 2,000,000	
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$	
							BODILY INJURY (Per person) \$	
							BODILY INJURY (Per accident) \$	
							PROPERTY DAMAGE (Per accident) \$	
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$	
							AGGREGATE \$	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	QWC1245898	10/15/2022	10/15/2023	☒ PER STATUTE ☐ OTH-ER	
	E.L. EACH ACCIDENT \$ 1,000,000							
	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000							
	E.L. DISEASE - POLICY LIMIT \$ 1,000,000							
A	Liquor Liability			BOP3018235	10/01/2022	10/01/2023	Each claim/aggregate \$1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is Additional Insured as respects General Liability, when required by written contract or agreement, and subject to the terms, conditions and limits as specified in the policy.

CERTIFICATE HOLDER**CANCELLATION**

City of Burlington 645 Pine St Burlington VT 05401	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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**CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS**

645 Pine Street, Suite A
Post Office Box 849
Burlington, VT 05402-0849
802.863.9094 VOX
802.863.0466 FAX
802.863.0450 TTY
www.burlingtonvt.gov

MEMORANDUM

TO: License Committee/City Council

FROM: Caleb Manna, Excavation Inspector, Department of Public Works

DATE: June 14, 2023

CC: Norman Baldwin, P.E. Assistant Director of Public Works/City Engineer
Chapin Spencer, Director of Public Works.
Laura Wheelock, P.E.; Sr. Public Works Engineer

RE: Birdseye Building Company– 288 Maple Street – Encumbrance Permit Application

Request

The applicant, Birdseye Building Company, is requesting approval for a License Agreement for an Encumbrance between the City and Birdseye for use of the public right-of-way located on the South side of Maple Street directly across from 288 Maple Street to reserve on-street parking to accommodate interior renovations.

As stated in Burlington Code of Ordinance Chapter 27-32(a): *"No permit as required by Section 27-31 shall be for longer than sixty (60) days, except as authorized by the city council."*

Overview

The Department of Public Works received an encumbrance permit application from Birdseye Building Company on May 22, 2023, requesting the use of eight (8) on-street public parking stalls adjacent to the residential property at 288 Maple Street. The requested occupation is for construction vehicle parking to accommodate work occurring at the existing residential dwelling. The parking spaces will be used for service-type works vehicles from various subcontractors and serve as a designated location for material deliveries. The restriction of the easternmost parking spaces will also assist in turning movements for large vehicles accessing the site.

The obstruction of on-street parking is anticipated to begin in June 2023 and conclude by June, 2025 at the latest. It is expected that all eight of the parking spaces will not be restricted for the duration of the project. During the initial phase of construction, there will be times when all spaces will be occupied with subcontractor parking, materials deliveries, and equipment storage. Whenever possible, Birdseye will restore all available on street parking not being used by project staff.

The designated area of public parking stalls will be restricted from 7 a.m. until 5 p.m., Monday through Friday. The spaces will be available for public use outside of the designated working hours and on weekends.

The area of the public right-of-way occupied will be 1,300 square feet, billed at the encumbrance rate of \$1/sq. ft. The parking spaces will be posted for no parking with city issued signs indicated the hours of no parking.

Recommendation

The Department of Public Works is supportive of entering into a License Agreement between the Applicant and the City with the above-mentioned conditions in place.

Thank you for consideration of this request, please do not hesitate to contact me directly at CManna@burlingtonvt.gov or 802-865-7562.

Attachments

- A. Application
- B. DPW Recommendation Form
- C. Photographs/Site Plan
- D. Certificate of Insurance

Motions:

License Committee:

"To approve and recommend that the City Council approve the Encumbrance Application for Birdseye Building Company requesting use of the public right-of-way for construction related parking as detailed in Attachment C, and to further recommend that the City Council authorize the Mayor to enter into a license agreement with the Applicant for use of the portion of the right-of-way outlined in the Application, subject to review by the City Attorney's Office."

City Council:

"To approve the Encumbrance Application for Birdseye Building Company requesting use of the public right-of-way for construction related parking as detailed in Attachment C, and authorize the Mayor to enter into a license agreement with the Applicant for use of the portion of the right-of-way outlined in the Application, subject to review by the City Attorney's Office."

CONSTRUCTION ENCUMBRANCE PERMIT AND LICENSE AGREEMENT

Birdseye Building Company
3104 Huntington Road, Richmond, VT 05477

This Long-term Encumbrance Permit and License Agreement (“Agreement”) is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont (“City”), and Birdseye Building Company, a Vermont corporation located at 3104 Huntington Road, Richmond, Vermont 05477 (“Licensee”). The City and Licensee agree to the terms and conditions of this Agreement.

1. RECITALS

- A. Authority.** Authority to enter into this Agreement exists in the City Charter and Burlington City Ordinance 27-32. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- 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. Background.** The City owns property, including the street and sidewalk right-of-way adjacent to the property located at 288 Maple Street. Licensee has submitted a construction encumbrance application requesting the occupation of City right-of-way on Maple Street with the obstruction of two on-street parking stalls. According to Licensee’s application, it will cover a 1,300-square-foot area of the dedicated public parking stall in the street, and occupy eight (8) parking spaces.
- D. Purpose.** This Agreement sets forth the terms and conditions for the requested use of the public right-of way.

2. EFFECTIVE DATE AND TERM

- A. Effective Date.** Once executed by both parties, this Agreement shall be valid and enforceable (“the Effective Date”). The City shall not be bound by any provision of this Agreement before the Effective Date and shall have no obligation for any performance before the Effective Date or after the expiration or termination of this Agreement.
- B. Term.** This Agreement shall commence on the Effective Date and expire on June 15, 2025.
- C. Termination.** This Agreement may be terminated as set forth in this §2.C. Upon termination, Licensee shall remove—at its own expense—all objects, materials, and other obstructions placed on the Premises. If Licensee refuses to promptly remove such obstructions, the City may remove all such obstructions, and the Licensee shall be liable for all expenses of such removal.
 - i. Discontinued Use.** The City shall have the exclusive right to immediately terminate this Agreement should Licensee or a subsequent owner discontinue the licensed use of the premise.
 - ii. Termination for Convenience.** At any time prior to completion of services specified under this Agreement, the City may terminate the Agreement for any reason by submitting written notice via certified or registered mail to the Licensee, not less than fifteen (15) days prior to the termination date, of its intention to do so. The Licensee shall make no claim against the City by reason of such termination.
 - iii. Breach.** The City shall have the exclusive right to terminate this Agreement if Licensee is in breach of this Agreement. The City shall provide 7 days written notice in advance of the

termination date.

3. DEFINITIONS

- A. **“Effective Date”** means the date on which this Agreement is approved and signed by the City as shown on the signature page of this Agreement.
- B. **“Encumbrance Fee”** means the sum of the encumbrance application fee and the square foot use fee, annually set by the City.
- C. **“Party”** means the City or Licensee and **“Parties”** means both the City and Licensee.
- D. **“Premises”** means the street and sidewalk rights-of-way on the South side of Maple Street directly across from 288 Maple Street.
- E. **“Property”** means the residential building lot located at 288 Maple Street in Burlington, Vermont, inclusive of the parking obstruction that is the subject of this Agreement.

4. GRANT OF LICENSE

The City hereby grants to Licensee a license to obstruct eight (8) public on-street parking spaces from 7 a.m. until 5 p.m., Monday through Friday, with construction-related vehicles adjacent to 288 Maple Street, on the South side of Maple Street, covering an area of 1,300 sq. ft., for the term set forth in §2.B of this Agreement. Licensee may use and maintain the occupied portion of the street existing in the City’s rights-of-way, which must be maintained and placed exactly as described in the plan approved by the Department of Public Works (“DPW”) and attached hereto as Attachment C.

5. LICENSE CONDITIONS

The Premises shall be maintained in accordance with all conditions set by DPW. Such conditions shall include the following enumerated conditions, but may also be supplemented by DPW upon reasonable notice if DPW determines that the public safety, health, or welfare requires such supplemental conditions:

- A. Licensee shall take all reasonable precautions to protect the public from potential hazards resulting and emanating from the Premises due to activities related to the uses for which this encumbrance is permitted.
- B. Licensee shall control the dust and dirt and other debris on the encumbered area and adjoining areas, including picking up and sweeping such dust, dirt and debris. Licensee shall submit a dust control and street sweeping plan to DPW’s excavation inspector detailing the activities it shall take to control such dust, dirt and debris, but shall also take all additional reasonable activities requested by DPW to control such dust, dirt and debris. All costs of these control activities shall be the responsibility of Licensee.
- C. Licensee shall not allow obstructions and interferences in the lines of sight on the Premises or the adjacent construction site on the Property.
- D. Licensee shall not maintain or store any toxic or hazardous waste materials or contaminants upon the Premises and shall defend, indemnify and save the City harmless from any claims, causes of action, penalties, fines or other assessments, or the expense and cost of cleanup, if any toxic or hazardous waste materials or contaminants are found on the Premises in connection with Licensee’s construction activities or use of the Premises.

- E. Licensee shall be responsible for removing, hauling and properly disposing of any accumulated snow or ice on the Premises or adjacent to any construction fences or barriers that cannot be removed by the City's conventional means or methods. All costs of this snow and ice removal shall be the responsibility of Licensee.

6. PAYMENT FOR LICENSE

- A. **License Fee.** Licensee shall pay the City encumbrance fees as provided by City ordinance and as further described in Attachment A.
- B. **Initial License Fee.** By signing this Agreement, the Parties acknowledge that Licensee has paid the City the license fee for the period beginning on the effective date and ending April 30th, 2024.

7. INSURANCE

- A. **Requirement.** Licensee shall maintain, throughout the term of this Agreement and any subsequent extension or renewals, comprehensive public liability insurance with an A- or better-rated insurance carrier qualified to transact business in the State of Vermont insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted by this Agreement in an amount not less than \$1,000,000 each occurrence. The City shall be named as an additional insured on such insurance policy.
- B. **Evidence.** Prior to execution of this Agreement, Licensee shall furnish the City with a certificate of insurance and endorsement that includes the provision naming the City as an additional insured. Licensee shall also furnish the City with an endorsement indicating that Licensee shall be given 30 days' written notification prior to cancellation of such insurance for nonpayment of premium and 30 days' written notice for any other reason. Licensee shall take all reasonable efforts to acquire an endorsement providing the City with 10 days' written notification prior to cancellation of such insurance for nonpayment of premium and 30 days' written notification for any other reason. If such endorsement is not reasonably available, then Licensee shall provide the City with notification of any impending cancellations within three days after receipt of such notice from its insurance carrier. The current certificate of insurance and applicable endorsements are attached to this Agreement as Attachment D.
- C. **Continuing Obligation.** Licensee shall provide the City with an updated certificate of insurance and applicable endorsements annually on or before the certificate's stated expiration. It is the responsibility of Licensee to ensure that a current certificate of insurance is on file with the City at all times.

8. INDEMNIFICATION

Licensee shall indemnify, defend, and hold harmless the City, its officers, officials, agents, and employees from liability for any claims, suits, expenses, losses, judgments, and damages arising as a result of the Licensee's acts and/or omissions, and the acts and/or omissions of Licensee's officers, directors, employees, agents, contractors, and subcontractors on or related to Licensee's use of the Premises or in connection with this Agreement or the rights granted to it under this Agreement. If the City, its officers, officials, 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 Licensee in writing that a claim to which the indemnification provision may apply has been received. Licensee 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. Under no conditions shall

the City be obligated to indemnify the Licensee 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 Licensee or any third party.

9. RESPONSIBILITY FOR SUPERVISION:

Licensee shall assume responsibility for general supervision of its contractors and any subcontractors, shall be solely responsible for all procedures, methods, and work, and shall be responsible to the City for all acts or omissions of its officers, employees, agents, contractors, subcontractors, or any other person related to any activity or work performed in connection with this Agreement or the rights granted to Licensee under this Agreement.

10. PUBLIC RELATIONS:

Throughout the performance of the work, the Licensee will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Licensee shall conduct themselves with propriety.

11. PERMITS

Licensee shall be responsible for obtaining all necessary City and/or State permits prior to performing any work on the Premises or in connection with this Agreement.

12. NUISANCES PROHIBITED

Licensee shall not—during the term of this Agreement—on or in the Premises, maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable City ordinance, State or Federal statute, or controlling law, regulation, or condition imposed whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement.

13. INSPECTION OF WORK:

The City shall, at all times, have access to the Premises for the purposes of inspection, and the Licensee shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Licensee 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 Licensee.

14. ASSIGNMENT OF RIGHTS

If Licensee sells the Property, Licensee may temporarily assign the rights granted herein to the new owner of the Property for a period of 60 days after closing. Any subsequent owner of the Property shall execute a new agreement with the City and provide proof of insurance within the 60 day period. Failure to comply with this §14 shall constitute a discontinued use under §2.C.i of this Agreement.

15. LIMITATION OF RIGHTS

Licensee acknowledges that no property interest or other right is created other than that specifically defined and limited by this Agreement.

16. WAIVER

The City'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. Waiver by the City may only occur through an expressed written waiver signed by an authorized representative of the City. No waiver of a breach of any of the covenants, agreements, or provisions contained in this Agreement shall be construed to be a waiver of any subsequent breach of the same or of any other provision in this Agreement.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement. All prior representations and understandings related to Licensee's use of the specified portions of the City's right-of-way, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

18. MODIFICATION

Modifications to this Agreement shall only be valid if agreed to in a formal written amendment to this Agreement, properly executed and approved by the Parties.

19. THIRD PARTY BENEFICIARIES

This Agreement does not 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 right for such third parties.

20. ATTACHMENTS

The following attachments are adopted, incorporated by reference, and made part of this Agreement:

- A. Attachment A:** Licensee's Application
- B. Attachment B:** Department of Public Works Encumbrance Recommendation Form
- C. Attachment C:** Photographs and Sketches of Encroachment
- D. Attachment D:** Certificate of Insurance

21. ORDER OF PRECEDENT

This Agreement shall control over any conflicting attachment.

— *Signature Page Follows* —

22. SIGNATURE PAGE

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.

The Parties hereto have executed this Agreement

LICENSEE
John Yates
Birdseye Building Company

By: _____
John Yates

Date: _____

CITY OF BURLINGTON
Mayor Miro Weinberger

By: _____
Mayor Miro Weinberger
Duly Authorized

Date: _____

EX-A



City of Burlington, VT

05/25/2023

REN-23-12

ROW Encumbrance Permit

Status: Active**Date Created:** May 18, 2023

Applicant

Michael Koch
mkoch@cea-vt.com
Civil Engineering Associates, Inc.
10 Mansfield View Lane
South Burlington, VT 05403
802-864-2323, ext. 309

Primary Location

288 Maple Street
Burlington, VT 05401

Owner:

CARPENTER, DONNA / THE DONNA G.
CARPENTER MARITAL TRUST
180 QUEEN CITY PARK RD BURLINGTON, VT
054015935

Right-of-Way Encumbrance Application

Type of Encumbrance Requested

Long-Term Encumbrance (More than 60 Days)

Encumbrance Description

Proposed right-of-way encumbrance, Monday through Friday between the hours of 7:00 am - 5:00 pm, along the southern side of Maple Street, between the curb cuts for 285 Maple Street and 295 Maple Street, to facilitate contractor parking and material delivery.

During winter and snow, vehicles will be moved for snow removal. If any obstructions remain, it will be the Applicant's responsibility to clear the snow around those obstructions.

Location of Encumbrance

Along the southern side of Maple Street, between the curb cuts for 285 Maple Street and 295 Maple Street.

The length of Long-Term Encumbrances (years) are negotiated on a case-by-case basis, and may be renewed at the request of the applicant.

EX-A1

Encumbrance Term (Years)

2

Encumbrance Start Date

06/15/2023

Encumbrance End Date

06/15/2025

Area Encumbered (Square Feet)

1,300

Company Information**Company Name**

Birdseye Building Company

Phone

802-458-5159

Street Address

3104 Huntington Road

City, State Zip

Richmond, VT 05477

Emailjyates@Birdseyevt.com



DEPARTMENT OF PUBLIC WORKS
645 PINE STREET
BURLINGTON, VT 05401
Voice: (802) 863-9094 Ext 3 Fax: (802) 863-0466
Email: dpwpinecustomerservice@burlingtonvt.gov

EX-B

DPW ENCUMBRANCE RECOMMENDATION FORM

DBA NAME: Birdseye DATE: 5/25/2023
COMPANY NAME: Birdseye Building Company PHONE: 802-458-5159
CONTACT NAME: John Yates EMAIL: jyates@birdseyevt.com
MAILING ADDRESS: 3104 Huntington Road, Richmond VT 05477
LOCATION OF ENCUMBRANCE: 288 Maple Street

FOR LONG-TERM ENCUMBRANCE, TABLE AND CHAIR ENCUMBRANCE, AND CONSTRUCTION ENCUMBRANCE

1. All encumbrances should be located on private property, if possible. In the opinion of the Excavation Inspector, is there an available alternative location for the requested encumbrance on private property?

YES []

NO ☒

2. Will there be sufficient width for plows, pedestrian access, and ADA requirements if the proposed encumbrance is added to the sidewalk/roadway/greenbelt?

YES ☒

NO []

3. Additional Comments: Parking for construction related vehicle in front of property in
on street parking stall, M-F 7am-5pm

4. Has this business remained in compliance to date (RENEWALS ONLY)?

YES []

NO []

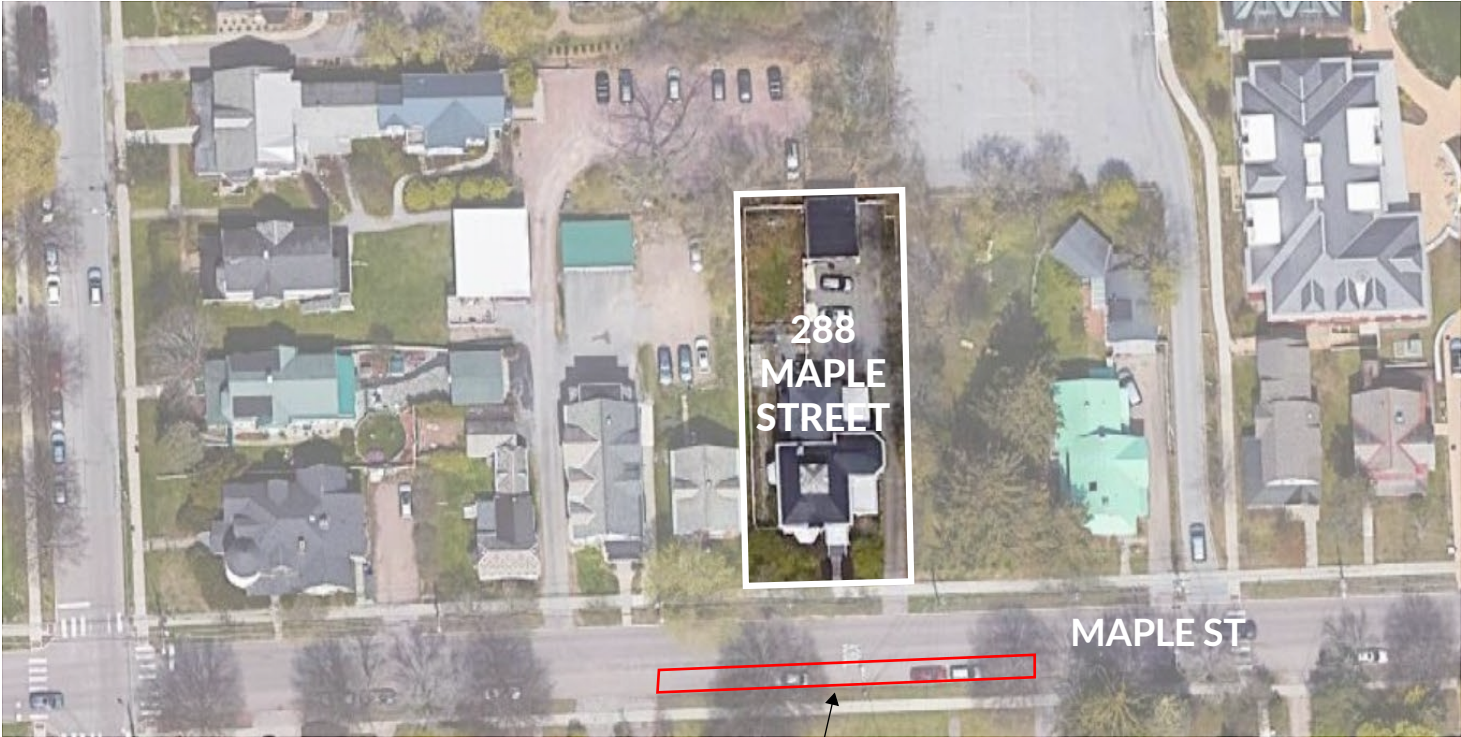
5. Describe the encumbrance, including square footage and location of items: Parking on South side of Maple St at #288. 1300 Sq. Ft.

BELOW THIS LINE – DEPARTMENT OF PUBLIC WORKS OFFICE USE ONLY

Approved: Yes ☒ No [] If no, reason: _____
Signature: Caleb Manna Date: 5/25/2023

288 MAPLE PARKING PLAN

EX-C



Reserving these spots during construction would allow for contractor parking as well as material delivery through the construction time-



EX-D

BIRDBUI-01

RCARLILE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/18/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hickok & Boardman Insurance Group 346 Shelburne Rd Burlington, VT 05401	CONTACT NAME: Janet Rockefeller	
	PHONE (A/C, No, Ext): (802) 383-1667	FAX (A/C, No): (802) 658-0541
	E-MAIL ADDRESS: jrockefeller@hbinsurance.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : West American Insurance Company	44393
	INSURER B : Ohio Security Insurance Company	24082
	INSURER C : Ohio Casualty Ins Co	24074
	INSURER D : A.I.M. Mutual Insurance Company	33758
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	X		BKW (23) 58 51 68 45	5/10/2023	5/10/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY Comp Ded \$100 ☒ NON-OWNED AUTOS ONLY Coll Ded \$250			BAS58516845	5/10/2023	5/10/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			USO58516845	5/10/2023	5/10/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ Prod- Comp Oper \$ 5,000,000
D	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	WMZ-800-8007498-2023A	5/10/2023	5/10/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Workers' Compensation - State Covered under 3.A. VERMONT (Excluded Individuals: President/treasurer/Secretary)

Additional Insured status applies for the City of Burlington, Burlington Public Works, Encumbrance Application Dept., on the General Liability policy per terms and conditions of attached form CG 88 10 04/13. 30 Day Notice of Cancellation applies per terms and conditions of attached form CG 89 70 04/13.

CERTIFICATE HOLDER

CANCELLATION

City of Burlington Burlington Public Works, Encumbrance Application Department 645 Pine St Burlington, VT 05401	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE



**CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS**

645 Pine Street, Suite A
Post Office Box 849
Burlington, VT 05402-0849
802.863.9094 VOX
802.863.0466 FAX
802.863.0450 TTY
www.burlingtonvt.gov

MEMORANDUM

TO: License Committee/City Council

FROM: Caleb Manna, Excavation Inspector, Department of Public Works

DATE: June 14, 2023

CC: Norman Baldwin, P.E., Assistant Director of Public Works/City Engineer
Chapin Spencer, Director of Public Works
Julia Ursaki, P.E., Public Works Transportation Engineer

RE: Burlington Bike Share Encumbrance Application – Bird Rides Inc.

Request

The applicant, Bird Rides Inc. (“Bird”), is requesting approval for a bike sharing network to exist in the public right-of-way. The bike share network will operate citywide, consisting of a fleet of e-bikes available to rent. Bikes will be located at various public bike racks throughout the city.

The request, if approved, will formally acknowledge the bike rack in public right-of-way through a License Agreement with the City.

As stated in Burlington Code of Ordinance Chapter 27-32(a): *“No permit as required by Section 27-31 shall be for longer than sixty (60) days, except as authorized by the city council.”*

Overview

Bird submitted an encumbrance application to the Department of Public Works on May 24, 2023 requesting to occupy 2,000 square feet of public right-of-way space through a fleet of 200 e-bikes that will operate within the City of Burlington and surrounding Chittenden County.

Bird has solidified an agreement with the Chittenden Area Transportation Management Association (“CATMA”) to establish a bicycle ride share network in Chittenden County. In discussions with Bird, DPW, and the City Attorney’s Office, it was determined that an Encumbrance Permit specific to the City of Burlington would be required in addition to the operational agreement with CATMA, in which Burlington is a participating member. The Encumbrance Permit and associated License Agreement will cover the private ride share network of up to 200 e-bikes proposed to operate in the public right-of-way. Through a Memorandum of Understanding between the City of Burlington and CATMA, DPW has worked with the Transportation, Energy, and Utilities Committee as well as local bike shops to include Burlington-specific operation conditions for Bird, such as demarcating no parking areas, no ride zones, and

slow zones, as well as providing equity pricing for underserved communities, a discount program for employers, and general pricing that does not undercut the cost to rent from our local bike shops.

Bird's platform allows riders to rent bikes and travel to the desired destination without the need to return the e-bike to a central hub or docking station. Instead, riders will leave rented bikes at publicly available bike storage facilities. A Bird app will show users the location of ride share bikes available to use throughout the city.

Wayward bikes, and bikes that need to be charged, will be collected daily, serviced off site, and returned to areas where bike share rides has the highest number of users. This allows for Bird to place bikes where the current demand is and shift central locations as needed to provide ride share services to members of the public. Users are able report issues with e-bikes or misplaced bikes directly to Bird via their app. Bird will has several local subcontractors responsible for managing the ride share network on a daily basis.

Recommendation

The Department of Public Works is supportive of entering a License Agreement between the applicant and the City.

Thank you for consideration of this request, please do not hesitate to contact me directly at CManna@burlingtonvt.gov or 802-865-7562.

Attachment

- A. Application
- B. DPW Recommendation Form
- C. Photographs
- D. Certificate of Insurance
- E. Encumbrance Permit and License Agreement

Motions:

License Committee:

"To approve and recommend that the City Council approve the Encumbrance Application for Bird Rides Inc. requesting use of public right of way space for an electric bike fleet, and to authorize the Mayor to execute the attached Encumbrance Permit and License Agreement, subject to review by the City Attorney's Office."

City Council:

"To approve the Encumbrance Application for Bird Rides Inc. requesting use of public right of way space for an electric bike fleet, and to authorize the Mayor to execute the attached Encumbrance Permit and License Agreement, subject to review by the City Attorney's Office."

An Equal Opportunity Employer

This material is available in alternative formats for persons with disabilities. To request an accommodation, please call 802.863.9094 (voice) or 802.863.0450 (TTY).

ENCUMBRANCE PERMIT AND LICENSE AGREEMENT

Bird Rides Inc.

8605 Santa Monica Boulevard, #20388, West Hollywood, CA 90069

This Long-term Encumbrance Permit and License Agreement (“Agreement”) is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont, (“City”), and Bird Rides Inc., a Delaware corporation with its principal place of business at 8605 Santa Monica Boulevard, #20388, West Hollywood, California 90069 (“Licensee”). The City and Licensee agree to the terms and conditions of this Agreement.

1. RECITALS

- A. Authority.** Authority to enter into this Agreement exists in the City Charter and Burlington City Ordinance 27-32. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- 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. Background.** The City owns property, including the street and sidewalk right-of-way for the entire municipality of the City of Burlington. The Licensee is seeking to operate an e-bike share network of up to two hundred (200) Licensee-owned bikes available for rent to the general public for travel throughout the city.
- D. Purpose.** This Agreement sets forth the terms and conditions for the requested use of the public right-of way.

2. EFFECTIVE DATE AND TERM

- A. Effective Date.** Once executed by both parties 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 for any performance before the Effective Date or after the expiration or termination of this Agreement.
- B. Term.** This Agreement shall commence on the Effective Date and expire on April 20, 2024.
- C. Termination.** This Agreement may be terminated as set forth in this §2.C. Upon termination, Licensee shall remove—at its own expense—all objects, materials, and other obstructions placed on the Premises. If Licensee refuses to promptly remove such obstructions, the City may remove all such obstructions and the Licensee shall be liable for all expenses of such removal.
 - i. Discontinued Use.** The City shall have the exclusive right to immediately terminate this Agreement should Licensee or a subsequent owner discontinue the licensed use of the premise.
 - ii. Termination for Convenience.** At any time prior to completion of services specified under this Agreement, the City may terminate the Agreement for any reason by submitting written notice via certified or registered mail to the Licensee, not less than fifteen (15) days prior to the termination date, of its intention to do so. The Licensee shall make no claim against the City by reason of such termination.
 - iii. Breach.** The City shall have the exclusive right to terminate this Agreement if Licensee is in breach of this Agreement. The City shall provide 7 days written notice in advance of the termination date.

- iv. **Non-Compliance.** If any of the License Conditions are not met to the satisfaction of the City, the Licensee will be responsible for restoration of the curbing and greenbelt adjacent to the property.
- v. **Renewal.** This Agreement shall be renewable annually for a one-year term provided that licensee submits an annual renewal application certifying that its renewal does not amend, modify or otherwise change the existing agreement, pays the requisite fees, and provides updated proof of insurance and all applicable endorsements, and provided that the Department of Public Works certifies that licensee is still in compliance with terms of this agreement.

3. DEFINITIONS

- A. **“Effective Date”** means the date on which this Agreement is approved and signed by the City as shown on the signature page of this Agreement.
- B. **“Encumbrance Fee”** means the sum of the encumbrance application fee and the square foot use fee annually set by the City.
- C. **“Party”** means the City or Licensee and **“Parties”** means both the City and Licensee.
- D. **“Premises”** means all public right-of-ways and public bicycle parking infrastructure in the City of Burlington.
- E. **“Property”** means portions of sidewalks and streets in all public rights-of-way in the City of Burlington.

4. GRANT OF LICENSE

The City hereby grants to Licensee a license to operate no more than two hundred (200) e-bikes as part of a bike ride share network covering the City of Burlington for the term set forth in §2.B of this Agreement. Licensee may use and maintain the e-bike fleet within the City’s right-of-way and must be maintained and placed exactly as described in the plan approved by the Department of Public Works, which is attached hereto as Attachment C.

5. LICENSE CONDITIONS

- A. **Operation of Bikes and e-Bikes along Church Street Marketplace.** Operator shall ensure that the electric assist function of any bike, e-bike, or other product operating on along Church Street in the Church Street Marketplace is automatically disabled once the bike, e-bike, or other product enters the geofenced area as illustrated in Attachment C (Prohibited Operation Area of Church Street Marketplace).
- B. **Maintenance and Public Protection.** Licensee is responsible for ensuring the e-bike fleet is kept in good condition. Licensee shall be responsible for all cost associated with maintenance and upkeep of the premise. Licensee shall be responsible for the timely pick up of e-bikes left in areas where bike parking is not allowed. Licensee shall be responsible repair to damaged bikes, and collecting bikes to be returned to designated location. Licensee shall be responsible for any damage to City infrastructure caused by one of Licensee’s e-bikes.
- C. **Accessibility.** Licensee is responsible for ensuring that e-bikes do not block, obstruct, or

otherwise interfere with the use of any proximate accessible parking spaces, public sidewalks, greenbelts, or other rights-of-way.

6. PAYMENT FOR LICENSE

- A. License Fee.** Licensee shall pay the City an encumbrance fee, as described in Attachment A.
- B. Initial License Fee.** By signing this Agreement, the Parties acknowledge that Licensee has paid the City the license fee for the period beginning on the Effective Date and ending April 30, 2024.

7. INSURANCE

- A. Requirement.** Licensee shall maintain throughout the term of this Agreement, and any subsequent extension or renewals, comprehensive public liability insurance with an A or better rated insurance carrier, qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted by this Agreement in an amount not less than \$1,000,000 each occurrence. The City shall be named as an additional insured on such insurance policy.
- B. Evidence.** Prior to execution of this Agreement, Licensee shall furnish the City with a certificate of insurance and endorsement that includes the provision naming the City as an additional insured. Licensee shall also furnish the City with an endorsement indicating that Licensee shall be given 15 days' written notification prior to cancellation of such insurance for nonpayment of premium and 45 days' written notice for any other reason. Licensee shall take all reasonable efforts to acquire an endorsement providing the City with 10 days' written notification prior to cancellation of such insurance for nonpayment of premium and 30 days' written notification for any other reason. If such endorsement is not reasonably available then Licensee shall provide the City with notification of any impending cancellations within three days after receipt of such notice from its insurance carrier. The current certificate of insurance and applicable endorsements are attached to this Agreement as Attachment D.
- C. Continuing Obligation.** Licensee shall provide the City with an updated certificate of insurance and applicable endorsements annually on or before the certificate's stated expiration. It is the responsibility of Licensee to ensure that a current certificate of insurance is on file with the City at all times.

8. INDEMNIFICATION

Licensee shall indemnify, defend, and hold harmless the City, its officers, officials, agents, and employees from liability for any claims, suits, expenses, losses, judgments, and damages arising as a result of the Licensee's acts and/or omissions, and the acts and/or omissions of Licensee's officers, directors, employees, agents, contractors, and subcontractors on or related to Licensee's use of the Premises or in connection with this Agreement or the rights granted to it under this Agreement. If the City, its officers, officials, 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 Licensee in writing that a claim to which the indemnification provision may apply has been received. Licensee 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. Under no conditions shall

the City be obligated to indemnify the Licensee 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 Licensee or any third party.

9. PUBLIC RELATIONS:

Throughout the performance of the work, the Licensee will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Licensee shall conduct themselves with propriety.

10. PERMITS

Licensee shall be responsible for obtaining all necessary City and/or State permits prior to performing any work on the Premises or in connection with this Agreement.

11. NUISANCES PROHIBITED

Licensee shall not—during the term of this Agreement—on or in the Premises, maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable City ordinance, State or Federal statute, or controlling law, regulation, or condition imposed whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement.

12. INSPECTION OF WORK:

The City shall, at all times, have access to the Premises for the purposes of inspection and the Licensee shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Licensee 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 Licensee.

13. ASSIGNMENT OF RIGHTS

Licensee shall not sell, sublet or assign this Licensee, or any part of it, without the written consent of the City.

14. LIMITATION OF RIGHTS

Licensee acknowledges that no property interest or other right is created other than that specifically defined and limited by this Agreement.

15. WAIVER

The City'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. Waiver by the City may only occur through an expressed written waiver signed by an authorized representative of the City. No waiver of a breach of any of the covenants, agreements, or provisions contained in this Agreement shall be construed to be a waiver of any subsequent breach of the same or of any other provision in this Agreement.

16. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement. All prior representations and understandings related to Licensee's use of the

specified portions of the City's right-of-way, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

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Modifications to this Agreement shall only be valid if agreed to in a formal written amendment to this Agreement, properly executed and approved by the Parties.

18. THIRD PARTY BENEFICIARIES

This Agreement does not 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 right for such third parties.

19. ATTACHMENTS

The following attachments are adopted, incorporated by reference, and made part of this Agreement:

- A. Attachment A: Licensee's Application**
- B. Attachment B: Department of Public Works Encumbrance Recommendation Form**
- C. Attachment C: Photographs and Sketches of Encroachment**
- D. Attachment D: Certificate of Insurance**

20. ORDER OF PRECEDENT

This Agreement shall control over any conflicting attachment.

— *Signature Page Follows* —

21. SIGNATURE PAGE

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.

The Parties hereto have executed this Agreement

LICENSEE
Bird Rides Inc.

By: _____
Jeremy Lynch

Date: _____

CITY OF BURLINGTON
Mayor Miro Weinberger

By: _____
Mayor Miro Weinberger
Duly Authorized

Date: _____

EX-A



City of Burlington, VT

06/08/2023

REN-23-14

ROW Encumbrance Permit

Status: Active**Date Created:** May 24, 2023

Applicant

Jeremy Lynch
jlynch@bird.co
8605 Santa Monica Blvd
#20388
West Hollywood, California 90069
7742221998

Primary Location

- Citywide
Burlington, VT -

Owner:

City of Burlington

Right-of-Way Encumbrance Application

Type of Encumbrance Requested

Long-Term Encumbrance (More than 60 Days)

Encumbrance Description

Bike Bike Sharing operation. Bikes will occupy areas of street/sidewalk/bike racks throughout the day in the City of Burlington, in areas that are not in a no ride/no park zone, such as Church Street & Red Rocks Park.

Location of Encumbrance

As stated above, the City areas listed above will be the locations of the bikes when not in use.

The length of Long-Term Encumbrances (years) are negotiated on a case-by-case basis, and may be renewed at the request of the applicant.

Encumbrance Term (Years)

0

Encumbrance Start Date

06/27/2023

Encumbrance End Date

06/27/2024

EX-A1

Company Information**Company Name**

Bird Rides Inc

Phone

774-222-1998

Street Address

392 NE 191st Street #20388

City, State Zip

Miami, FL 33179

Emailjlynch@bird.co



DEPARTMENT OF PUBLIC WORKS
645 PINE STREET
BURLINGTON, VT 05401
Voice: (802) 863-9094 Ext 3 Fax: (802) 863-0466
Email: dpwpinecustomerservice@burlingtonvt.gov

EX-B

DPW ENCUMBRANCE RECOMMENDATION FORM

DBA NAME: _____ DATE: 6/8/23
COMPANY NAME: Bird Rides Inc. PHONE: 772-222-1998
CONTACT NAME: Jeremy Lynch EMAIL: jlynch@bird.co
MAILING ADDRESS: 392 NE 191st Street #20388, Miami FL 33179
LOCATION OF ENCUMBRANCE: City of Burlington Public Right of Way

FOR LONG-TERM ENCUMBRANCE, TABLE AND CHAIR ENCUMBRANCE, AND CONSTRUCTION ENCUMBRANCE

1. All encumbrances should be located on private property, if possible. In the opinion of the Excavation Inspector, is there an available alternative location for the requested encumbrance on private property?

YES []

NO ☒

2. Will there be sufficient width for plows, pedestrian access, and ADA requirements if the proposed encumbrance is added to the sidewalk/roadway/greenbelt?

YES ☒

NO []

3. Additional Comments: _____
Bird Bikes will utilize existing bike parking infrastructure

4. Has this business remained in compliance to date (RENEWALS ONLY)?

YES []

NO []

5. Describe the encumbrance, including square footage and location of items: _____
Up to 200 e bikes as part of ride share network operating in Chittenden County
Bikes are 10 sq. ft. per bike.

BELOW THIS LINE – DEPARTMENT OF PUBLIC WORKS OFFICE USE ONLY

Approved: Yes ☒ No [] If no, reason: _____
Signature: Caleb Manna Date: 6/8/23

BirdBike

Battery	720WHr Interchangeable
Incline	Up to 20%
Motor	250W, 47N.m total power

EX-C

Dual Hand Brakes
Durable and Safe
Drum Brakes

Large, Easy to Read Display

Bird Vehicle Location
Services (VLS)
Multi-mode geolocation
(GPS, GLONASS, BDS)

Safety Decal

Swappable Battery
Up to 90 km/56 miles per charge, IP67 Rating

250W Motor
15 mph top speed

Unique ID

Extra bright
tail light

26 inch
pneumatic
tires

Security& Tip Detection
Unlicensed movement and tip
over detection

Integrated
cable lock

Convenient Storage Basket

Extra bright headlight

IoT Connectivity
Remote motor deactivation,
power and speed limitations

Robust vehicle
diagnostic system
to ensure safe riding.

Industry Leading Security
(GSM and BLE 4.1)
Lock/Unlock; haptic and
alarm sounds

High Performance
Materials
Aerospace grade
aluminum alloy

B I R D

SAFETY DECAL

16+

Must be 16+
to ride



One person per
vehicle



Respect local
traffic laws



Always wear
a helmet



No riding on
sidewalks

1-866-205-2442
HELLO@BIRD.CO

UNIQUE ID



8 J H A K



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/26/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH RISK & INSURANCE SERVICES FOUR EMBARCADERO CENTER, SUITE 1100 CALIFORNIA LICENSE NO. 0437153 SAN FRANCISCO, CA 94111	EX-D	CONTACT NAME: PHONE (A/C, No. Ext): FAX (A/C, No): E-MAIL ADDRESS:
CN120046401--GAUWU-23-24		INSURER(S) AFFORDING COVERAGE INSURER A: Apollo Syndicate Management Ltd INSURER B: N/A INSURER C: N/A INSURER D: INSURER E: INSURER F:
INSURED Bird Rides, Inc. 392 NE 191st Street #20388 Miami, FL 33179		NAIC # N/A N/A

COVERAGES**CERTIFICATE NUMBER:**

SEA-003920122-03

REVISION NUMBER: 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ SIR: \$500,000 GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			BOWCN2250539	06/01/2022	06/30/2023	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ N/A PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CITY OF BURLINGTON, BURLINGTON PUBLIC WORKS, ENCUMBRANCE APPLICATION DEPT. are included as additional insured where required by written contract.

CERTIFICATE HOLDER**CANCELLATION**CITY OF BURLINGTON,
BURLINGTON PUBLIC WORKS,
ENCUMBRANCE APPLICATION DEPT.
645 PINE ST
BURLINGTON, VT 05401

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh Risk & Insurance Services*Charity O'Sullivan*

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**CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS**

645 Pine Street, Suite A
Post Office Box 849
Burlington, VT 05402-0849
802.863.9094 VOX
802.863.0466 FAX
802.863.0450 TTY
www.burlingtonvt.gov

MEMORANDUM

TO: License Committee/City Council

FROM: Caleb Manna, Excavation Inspector, Department of Public Works

DATE: June 14, 2023

CC: Norman Baldwin, P.E. Assistant Director of Public Works/City Engineer
Chapin Spencer, Director of Public Works.
Laura Wheelock, P.E.; Sr. Public Works Engineer

RE: Whiting-Turner Encumbrance Application – Burlington High School

Request

The applicant, Whiting-Turner Contracting Company, working on behalf of the Burlington School District, is requesting approval for the occupation of 3,600 square feet of public right-of-way space on the West side of North Avenue directly adjacent to the Burlington High School for the installation of a chain link construction fence, installation of a temporary sidewalk, and on-street parking restriction for Institute Road.

As stated in Burlington Code of Ordinance Chapter 27-32(a): *"No permit as required by Section 27-31 shall be for longer than sixty (60) days, except as authorized by the city council."*

Overview

The Department of Public Works received an encumbrance permit application (REN 23-10 and REN 23-9) from Whiting-Turning on May 16, 2023, requesting use of the public right of way to facilitate construction on the new Burlington High School.

The purpose of this request is to install a chain link fence with privacy screening around the work site. In doing so, access from the public sidewalk on the West side of North Avenue through the site will be restricted. To accommodate pedestrian walkways, and to avoid an extended long term sidewalk detour, a temporary asphalt sidewalk path will be constructed along the West side of North Avenue adjacent to the high school, and connect to the public sidewalk at North Avenue and Institute Road, to be used until final site improvements are completed.

Under this project, it is expected there will be times when the public parking stalls on Institute Road will be removed to accommodate truck turning access to the site and to provide public protection from intrusive construction activities. Public parking will remain in place until large

deliveries are scheduled, or additional public protection is required. On-street parking will be available outside of working hours and on weekends.

The area of the public right-of-way occupied will be 3,600 square feet, 1,975 square feet of which being public parking on Institute Road, and 1,625 square feet on North Avenue, billed at the encumbrance rate of \$1/sq. ft. The parking spaces will be posted for no parking with City-issued signs indicated the hours of no parking, and will be issued on an "as needed" basis, with the intent of keeping public parking available as long as possible for the duration of the project.

Recommendation

The Department of Public Works is supportive of entering into a License Agreement between the applicant and the City.

Thank you for consideration of this request, please do not hesitate to contact me directly at CManna@burlingtonvt.gov or 802-865-7562.

Attachments

- A. Application
- B. DPW Recommendation Form
- C. Site Plan
- D. Certificate of Insurance

Motions:

License Committee:

"To approve and recommend that the City Council approve the Encumbrance Application for Whiting-Turner requesting to occupy a portion of public right-of-way on North Avenue and Institute Road as detailed in Attachment C, and to further recommend that the City Council authorize the Mayor to enter into a license agreement with the Applicant for use of the right-of-way outlined in the Application, subject to review by the City Attorney's Office."

City Council:

"To approve the Encumbrance Application for Whiting-Turner requesting to occupy a portion of the public right-of-way on North Avenue and Institute Road as detailed in Attachment C, and authorize the Mayor to enter into a license agreement with the Applicant for use of the right-of-way outlined in the Application, subject to review by the City Attorney's Office."

CONSTRUCTION ENCUMBRANCE LICENSE AGREEMENT

Whiting-Turner Contracting Company
195 Church Street, New Haven CT

This Construction Encumbrance License Agreement (“Agreement”) is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont (“City”), and Whiting-Turner Contracting Company, a Maryland corporation located at 300 East Joppa Road, Baltimore, Maryland 21286, and registered with the Vermont Secretary of State to do business in Vermont (“Licensee”). The City and Licensee agree to the terms and conditions of this Agreement.

1. RECITALS

- A. Authority.** Authority to enter into this Agreement exists in the City Charter and Burlington City Ordinance 27-32. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- 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. Background.** The City owns property, including the street and sidewalk right-of-way adjacent to the property located 52 Institute Road. Licensee has submitted a construction encumbrance application seeking occupation of City right-of-way on North Avenue and Institute Road with construction fencing, temporary pedestrian sidewalk, and parking restrictions. According to Licensee’s application, it will cover a 3,600 square foot area of the public sidewalk and parking stall, with 1,625 sq. ft. on the West side of North Avenue and 1,975 sq. ft. on the South side of Institute Road directly adjacent to Burlington High School.
- D. Purpose.** This Agreement sets forth the terms and conditions for the requested use of the public right-of-way.

2. EFFECTIVE DATE AND TERM

- 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 for any performance before the Effective Date or after the expiration or termination of this Agreement.
- B. Term.** This Agreement shall commence on the Effective Date and expire on July 1, 2026.
- C. Termination.** This Agreement may be terminated as set forth in this §2.C. Upon termination, Licensee shall remove—at its own expense—all objects, materials, and other obstructions placed on the Premises. If Licensee refuses to promptly remove such obstructions, the City may remove all such obstructions and the Licensee shall be liable for all expenses of such removal.
 - i. Discontinued Use.** The City shall have the exclusive right to immediately terminate this Agreement should Licensee or a subsequent owner discontinue use of the premise.
 - ii. Termination for Convenience.** At any time prior to completion of services specified under this Agreement, the City may terminate the Agreement for any reason by submitting written notice via certified or registered mail to the Licensee, not less than fifteen (15) days prior to the termination date, of its intention to do so. The Licensee shall make no claim against the City by reason of such termination.

- iii. **Breach.** The City shall have the exclusive right to terminate this Agreement if Licensee is in breach of this Agreement. The City shall provide 7 days written notice in advance of the termination date.

3. DEFINITIONS

- A. **“Effective Date”** means the date on which this Agreement is approved and signed by the City as shown on the signature page of this Agreement.
- B. **“Encumbrance Fee”** means the sum of the encumbrance application fee and the square foot use fee annually set by the City.
- C. **“Party”** means the City or Licensee and **“Parties”** means both the City and Licensee.
- D. **“Premises”** means the street and sidewalk right-of-way on the West side of North Avenue and the South side of Institute Road adjacent to Burlington High School.
- E. **“Property”** means the Burlington School District building lot located at 52 Institute Road in Burlington, Vermont, inclusive of the construction fencing, temporary sidewalk, and parking restriction that are the subject of this Agreement.

4. GRANT OF LICENSE

The City hereby grants to Licensee a license to maintain construction fencing, a temporary pedestrian sidewalk path, and removal of on street public parking in the public right-of-way adjacent to 52 Institute Road, on the West side of North Avenue and the South side of Institute Road, covering a total area of 3,600 sq. ft. for the term set forth in §2.B of this Agreement. Licensee may use and maintain the occupied portion of the greenbelt and parking stall existing in the City’s right-of-way and must be maintained and placed exactly as described in the plan approved by the Department of Public Works, which is attached hereto as Attachment C.

5. LICENSE CONDITIONS

The Premises shall be maintained in accordance with all conditions set by DPW. Such conditions shall include the following enumerated conditions, but may also be supplemented by DPW upon reasonable notice in the event DPW determines that the public safety, health and or welfare require such supplemental conditions:

- A. Licensee shall take all reasonable precautions to protect the public from potential hazards resulting and emanating from the Premises due to activities related to the uses for which this encumbrance is permitted.
- B. Licensee shall control the dust and dirt and other debris on the encumbered area and adjoining areas, including picking up and sweeping such dust, dirt and debris. Licensee shall submit a dust control and street sweeping plan to DPW’s excavation inspector detailing the activities it shall take to control such dust, dirt and debris. Licensee shall take all additional reasonable activities requested by DPW to control such dust, dirt and debris. Licensee shall maintain all construction barriers and keep them in good, working condition. All costs associated with the maintenance and upkeep of construction barriers are solely the responsibility of Licensee.
- C. Licensee shall not allow obstructions and interferences in the lines of sight on the Premises or the adjacent construction site.

- D. Licensee shall institute and properly maintain a traffic control plan for all types of vehicles and for pedestrians such that said vehicles and pedestrians are protected from hazards and dangers emanating from the Premises and the associated construction site and related construction activities. Licensee shall erect proper signage to redirect pedestrians safely from the Premises. Licensee shall submit a traffic control plan for pedestrians, including a plan for signage, to DPW's excavation inspector detailing the activities it shall take to control such pedestrian traffic. Licensee shall take all additional reasonable activities requested by DPW to control such pedestrian traffic. Licensee shall submit a traffic control plan for vehicles, including a plan for signage, to DPW's excavation inspector detailing the activities it shall take to control such vehicular traffic. Licensee shall take all additional reasonable activities requested by DPW to control such vehicular traffic or pedestrian traffic to provide collaboration or cooperation with adjacent projects. DPW reserves the right to request modifications and alterations to the vehicular or pedestrian traffic control to ensure public safety throughout the duration of the project, with all costs borne by Licensee to implement those changes.
- E. Licensee shall protect all the utilities located on, about, adjoining, and adjacent to the Premises and shall protect all utilities regardless of their proximity to the Premises from all manner of harm and damage caused by activities conducted on or about or in connection with Licensee's use of the Premises. Licensee shall submit a utility protection plan to DPW's excavation inspector detailing the activities it shall take to protect such utilities. Licensee shall take all additional reasonable activities requested by DPW to protect such utilities.
- F. Licensee shall not maintain or store any toxic or hazardous waste materials or contaminants upon the Premises. Licensee shall defend, indemnify and save the City harmless from any claims, causes of action, penalties, fines or other assessments, or the expense and cost of cleanup arising out of or in connection with said hazardous or toxic materials or contaminants upon said premises caused by Licensee.
- G. Licensee shall be responsible for removing, hauling and properly disposing any accumulated snow or ice on the Premises, or adjacent to any construction fences or barriers that cannot be removed by the City's conventional means or methods.
- H. If Licensee fails to complete the planned public improvements for restoration of encumbered city right of way, licensee shall be responsible for all associated costs in restoring the street and sidewalk to conditions approved by the Department of Public Works.

6. PAYMENT FOR LICENSE

- A. **License Fee.** Licensee shall pay the City a license fee equal to the applicable Encumbrance Fee, as described in Attachment A.
- B. **Initial License Fee.** By signing this Agreement, the Parties acknowledge that Licensee has paid the City the licensee fee for the fee period ending April 30, 2024.

7. INSURANCE

- A. **Requirement.** Licensee shall maintain in effect throughout the term of this Agreement, and any subsequent renewals, comprehensive public liability insurance with an A rated insurance carrier, or better, qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Agreement in an amount not less than \$1,000,000 each occurrence. The City shall be named as an additional insured on such insurance policy.

- B. Evidence.** Prior to execution of this Agreement, Licensee shall furnish the City with a certificate of insurance and endorsement that shall include the provision that the City is named as an additional insured. Licensee shall also furnish the City with an endorsement indicating that Licensee shall be given 15 days' written notification prior to cancellation of such insurance for nonpayment of premium and 45 days' written notice for any other reason. Licensee shall take all reasonable efforts to acquire an endorsement providing the City with 10 days' written notification prior to cancellation of such insurance for nonpayment of premium and 30 days' written notification for any other reason. If such endorsement is not reasonably available then Licensee shall provide the City with notification of any impending cancellations within three days after receipt of such notice from its insurance carrier. The current certificate of insurance and applicable endorsements are attached to this Agreement as Attachment D.
- C. Continuing Obligation.** Licensee shall provide the City with an updated certificate of insurance and applicable endorsements annually on or before the certificate's stated expiration. It is the responsibility of Licensee to ensure that a current certificate of insurance is on file with the City at all times.

8. INDEMNIFICATION

The Licensee shall indemnify, defend, and hold harmless the City and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the Licensee's acts and/or omissions, and the acts and/or omissions of Licensee's contractors and subcontractors under this Agreement. 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 Licensee in writing that a claim to which the indemnification provision may apply has been filed. Licensee 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. Under no conditions shall the City be obligated to indemnify the Licensee 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 Licensee or any third party.

9. RESPONSIBILITY FOR SUPERVISION:

The Licensee shall assume primary responsibility for general supervision of its contractors and any subcontractors for all work performed under the Agreement and shall be solely responsible for all procedures, methods, and work performed under the Agreement. The Licensee shall be responsible to the City for all acts or omissions of its contractors and subcontractors and any other person performing work under this Agreement.

10. PUBLIC RELATIONS:

Throughout the performance of the work, the Licensee will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Licensee shall conduct themselves with propriety.

11. PERMITS

Licensee shall be responsible for obtaining all necessary City and/or State permits prior to placement, repair, or reconstruction.

12. NUISANCES PROHIBITED

Licensee shall not—during the term of this Agreement—on or in the Premises, maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable City ordinance, State or Federal statute, or controlling law, regulation, or condition imposed whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement.

13. INSPECTION OF WORK:

The City shall, at all times, have access to the Premises for the purposes of inspection and the Licensee shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Licensee 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 Licensee.

14. ASSIGNMENT OF RIGHTS

If Licensee sells the Property, Licensee may temporarily assign the rights granted herein to the new owner of the Property for a period of 60 days after closing. Any subsequent owner of the Property shall execute a new agreement with the City and provide proof of insurance within the 60 day period. Failure to comply with this §11 shall constitute a discontinued use under §2.C.i of this Agreement.

15. LIMITATION OF RIGHTS

Licensee acknowledges that no property or other right is created other than that specifically defined and limited by this Agreement.

16. WAIVER

The City'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. Waiver by the City may only occur through an expressed written waiver signed by an authorized representative of the City. No waiver of a breach of any of the covenants, agreements, or provisions contained in this Agreement shall be construed to be a waiver of any subsequent breach of the same or of any other provision in this Agreement.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement. All prior representations and understandings related to Licensee's use of the City's right-of-way, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

18. MODIFICATION

Modifications to this Agreement shall only be valid if agreed to in a formal written amendment to this Agreement, properly executed and approved by the Parties.

19. THIRD PARTY BENEFICIARIES

This Agreement does not confer any rights or remedies upon any person or entity other 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 right for such third parties.

20. ATTACHMENTS

The following attachments adopted, incorporated by reference, and made part of this Agreement:

- A. Attachment A:** Licensee's Application
- B. Attachment B:** Department of Public Works Encumbrance Recommendation Form
- C. Attachment C:** Photographs and Sketches of Encroachment
- D. Attachment D:** Certificate of Insurance

21. ORDER OF PRECEDENT

This Agreement shall control the relationship of the Parties over any conflicting attachment.

— *Signature Page Follows* —

22. SIGNATURE PAGE

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.

The Parties hereto have executed this Agreement

LICENSEE
Anthony Bomgardner
Whiting-Turner Contracting Company

By: _____
Anthony Bomgardner

Date: _____

CITY OF BURLINGTON
Mayor Miro Weinberger

By: _____
Mayor Miro Weinberger
Duly Authorized

Date: _____

EX-A



City of Burlington, VT

05/24/2023

REN-23-9

ROW Encumbrance Permit

Status: Active**Date Created:** May 16, 2023**Applicant**

Anthony Bomgardner Sr
anthony.bomgardner@whiting-turner.com
52 Institute Road
Burlington, VT 05401
1-203-410-7292

Primary Location

52 Institute Road
Burlington, VT 05408

Owner:

CITY SCHOOL DEPARTMENT /
ADMISTRATIVE OFFICES/EED
150 COLCHESTER AV BURLINGTON, VT
05401

Right-of-Way Encumbrance Application**Type of Encumbrance Requested**

Long-Term Encumbrance (More than 60 Days)

Encumbrance Description

Closure of all available paring on Institute Road

Location of Encumbrance

Institute Road from North Ave intersection to westward to primary track entrance

The length of Long-Term Encumbrances (years) are negotiated on a case-by-case basis, and may be renewed at the request of the applicant.

Encumbrance Term (Years)

3

Encumbrance Start Date

07/01/2023

Encumbrance End Date

07/01/2026

EX-A1



City of Burlington, VT

05/24/2023

REN-23-10

ROW Encumbrance Permit

Status: Active**Date Created:** May 16, 2023

Applicant

Anthony Bomgardner Sr
anthony.bomgardner@whiting-turner.com
52 Institute Road
Burlington, VT 05401
1-203-410-7292

Primary Location

52 Institute Road
Burlington, VT 05408

Owner:

CITY SCHOOL DEPARTMENT /
ADMISTRATIVE OFFICES/EED
150 COLCHESTER AV BURLINGTON, VT
05401

Right-of-Way Encumbrance Application

Type of Encumbrance Requested

Long-Term Encumbrance (More than 60 Days)

Encumbrance Description

Sidewalk closure

Location of Encumbrance

West side of North Ave approximately 325' north of the Institute Road and north Ave.
intersection

The length of Long-Term Encumbrances
(years) are negotiated on a case-by-case
basis, and may be renewed at the request of
the applicant.

Encumbrance Term (Years)

3

Encumbrance Start Date

06/01/2023

Encumbrance End Date

06/01/2026



DEPARTMENT OF PUBLIC WORKS
 645 PINE STREET
 BURLINGTON, VT 05401
 Voice: (802) 863-9094 Ext 3 Fax: (802) 863-0466
 Email: dpwpinecustomerservice@burlingtonvt.gov

DPW ENCUMBRANCE RECOMMENDATION FORM

DBA NAME: _____ DATE: 5/22/2023
 COMPANY NAME: Whiting-Turner Contracting Co. PHONE: 203-410-7292
 CONTACT NAME: Anthony Bomgardner Sr. EMAIL: anthony.bomgardner@whiting-turner.com
 MAILING ADDRESS: 195 Church Street, New Haven CT 06510
 LOCATION OF ENCUMBRANCE: Burlington High School, North Ave and Institute Rd.

FOR LONG-TERM ENCUMBRANCE, TABLE AND CHAIR ENCUMBRANCE, AND CONSTRUCTION ENCUMBRANCE

1. All encumbrances should be located on private property, if possible. In the opinion of the Excavation Inspector, is there an available alternative location for the requested encumbrance on private property?

YES []

NO ☒

2. Will there be sufficient width for plows, pedestrian access, and ADA requirements if the proposed encumbrance is added to the sidewalk/roadway/greenbelt?

YES ☒

NO []

3. Additional Comments: _____

Pedestrian access will be maintained on North Ave with temporary sidewalk.

Parking restriction on Institute Road for construction vehicle access as needed.

4. Has this business remained in compliance to date (RENEWALS ONLY)?

YES []

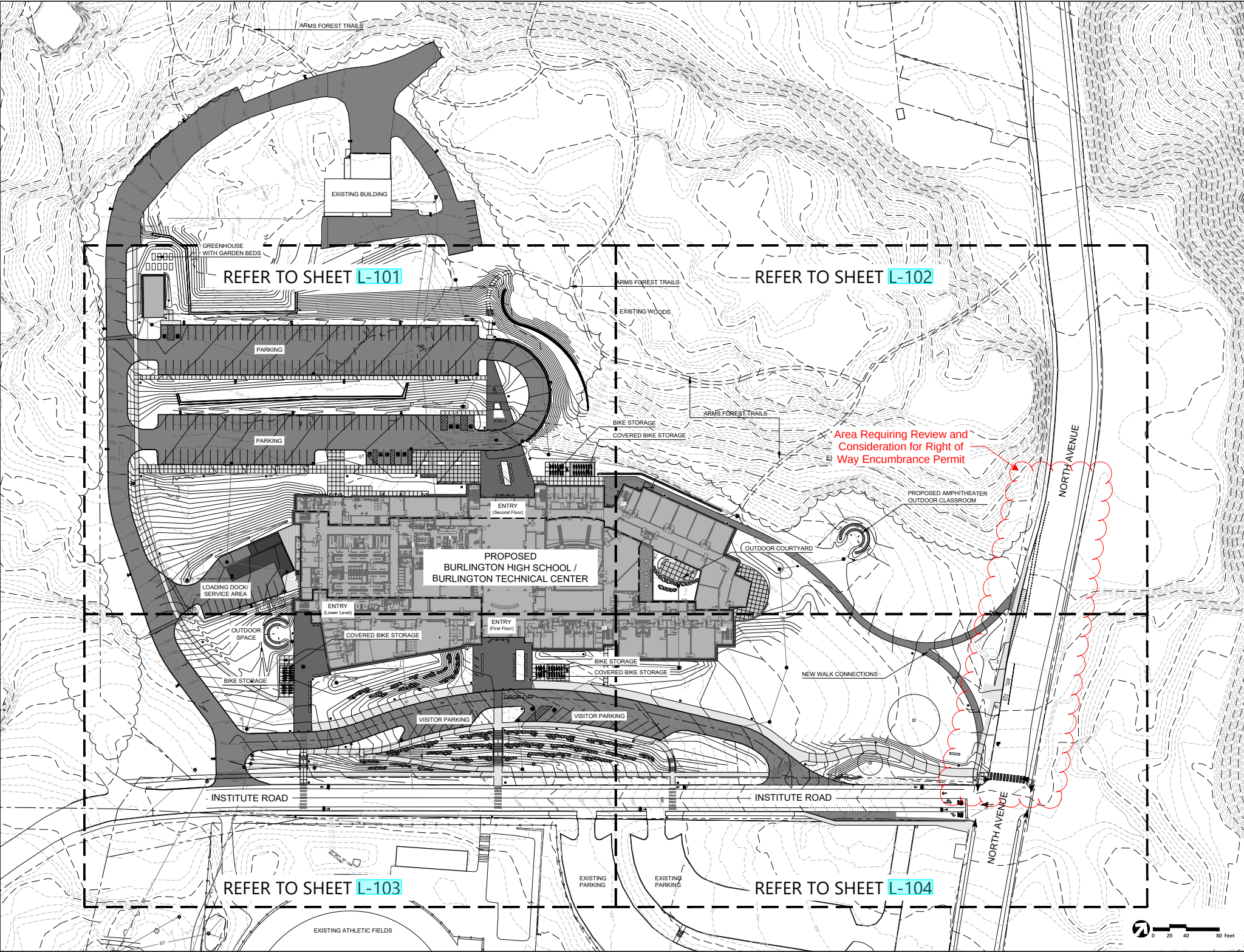
NO []

5. Describe the encumbrance, including square footage and location of items: _____

Construction fencing and temporary sidewalk on North Ave. Parking restriction for vehicle turning movements on Institute Rd.

BELOW THIS LINE – DEPARTMENT OF PUBLIC WORKS OFFICE USE ONLY

Approved: Yes ☒ No [] If no, reason: _____
 Signature: Caleb Manna Date: 5/22/2023



EARLY BID
PACKAGE 1

NOT FOR
CONSTRUCTION

fff

freeman / french / freeman
65 Maple Street - Burlington, VT 05401
802-255-5844 - www.f3freem.com
Architects / Planning / Engineers

CLA

Calla Lindberg Architects
118 Elm Street
Burlington, VT 05401
802-255-4455

DRA

Design Resources Architects
100 North Main Street
Burlington, VT 05401
802-255-4455

vhb

Landscape Architecture
601 Old Street, Suite 101
South Burlington, VT 05403

ISSUED FOR EARLY BID PACKAGE 1 - SITE, FOUNDATION, STEEL, CONCRETE AND ELECTRICAL SWITCHGEAR. DRAWINGS ISSUED ARE IN PROGRESS AND WILL BE PUBLISHED WITH NEW ORIGIN DATE (NO REVISION CLOUDS) WHEN COMPLETE. ENLARGED ARCHITECTURAL DRAWINGS, DETAILS, AND SIMILAR ARE SHOWN AS REFERENCES, BUT ARE NOT INCLUDED IN THIS SUBMISSION.

BURLINGTON HIGH
SCHOOL &
BURLINGTON
TECHNICAL CENTER

52 INSTITUTE ROAD,
BURLINGTON, VERMONT

PROJECT NO:
Proj #2170

ISSUANCE DATE:
01/20/2023

SCALE:
1"=40'

DESIGNED BY:
JIB/MKW

CHECKED BY:
MKW

DATE PLOTTED:
01/20/2023

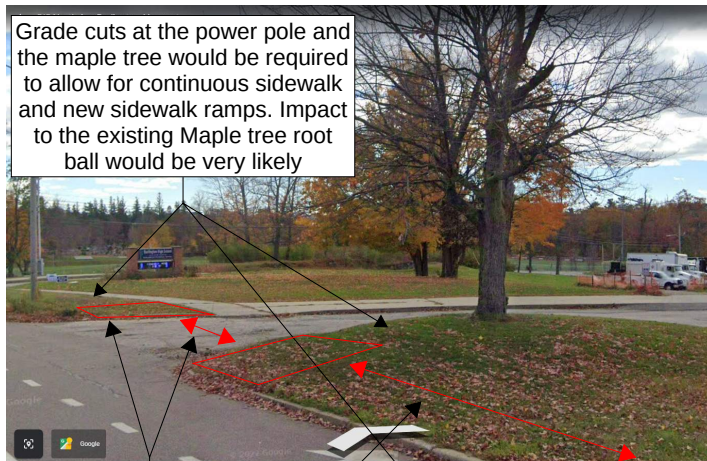
SHEET CONTENTS:
OVERALL
LANDSCAPE
LAYOUT PLAN

SHEET NO:
L-100

SCALE:
1"=40'

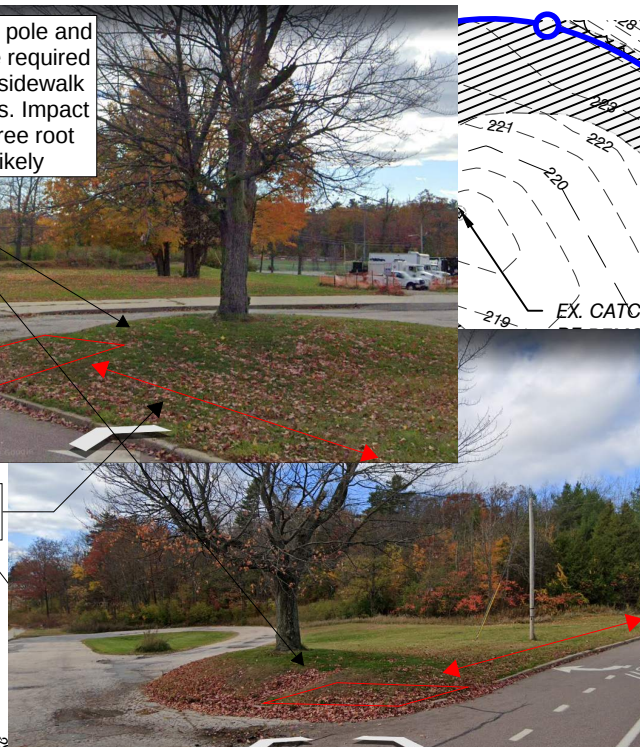
EX-C

Page 70 of 88

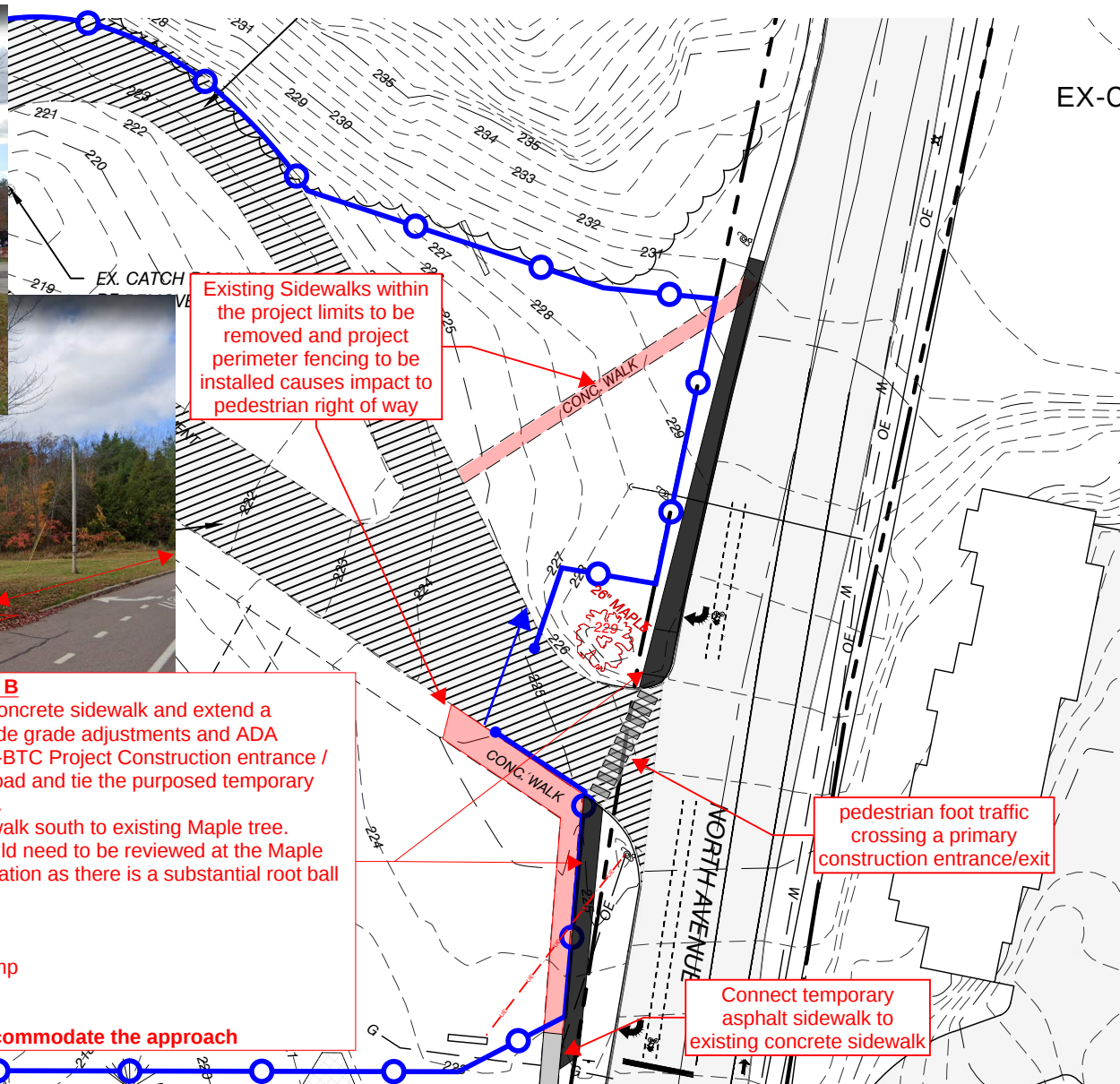


Grade cuts at the power pole and the maple tree would be required to allow for continuous sidewalk and new sidewalk ramps. Impact to the existing Maple tree root ball would be very likely

Temporary walk path extension, Curb cut, and crosswalk



Existing Sidewalks within the project limits to be removed and project perimeter fencing to be installed causes impact to pedestrian right of way



EX-C1

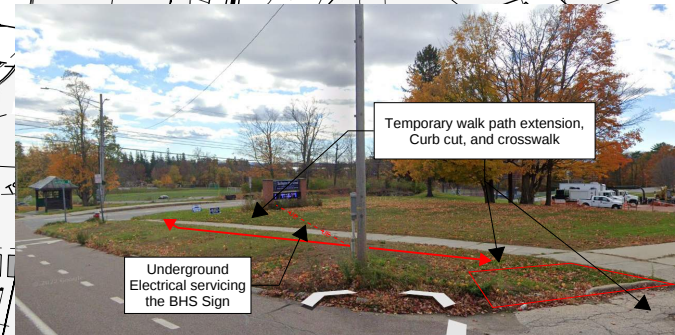
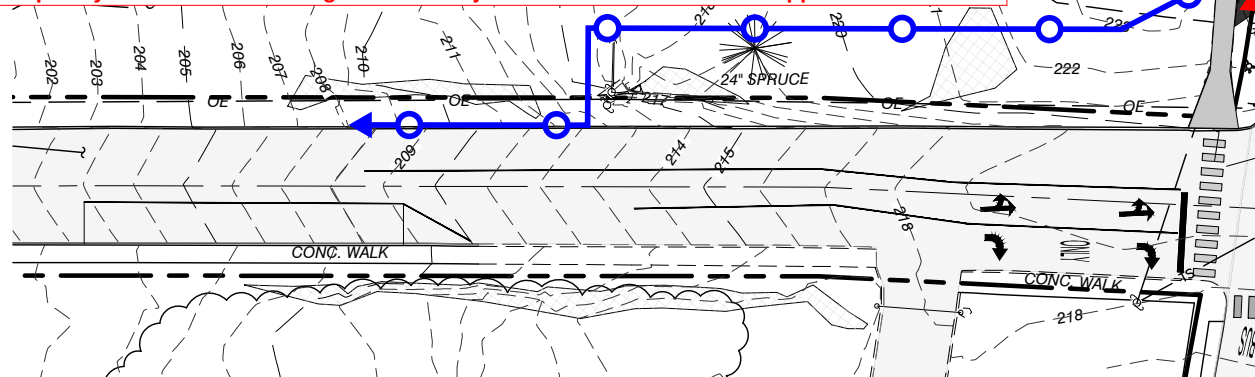
pedestrian foot traffic crossing a primary construction entrance/exit

Connect temporary asphalt sidewalk to existing concrete sidewalk

ROW Encumbrance Option B

- On the west side of North Ave. remove a portion of the existing concrete sidewalk and extend a temporary bituminous sidewalk south towards Institute road. Provide grade adjustments and ADA sidewalk ramp on either side of the existing Bus loop (Future BHS-BTC Project Construction entrance / Egress) continue the temporary sidewalk south towards Institute road and tie the purposed temporary sidewalk back into the existing sidewalk just prior to institute Road.
- Excavate 8"-10" of existing substrate material from existing sidewalk south to existing Maple tree. Grades and the potential to achieve an acceptable ADA slope would need to be reviewed at the Maple tree and power pole on the opposing side of the bus loop entry location as there is a substantial root ball and grade change in those locations
- Install 6" suitable base material and compact.
- Top with 2" of compacted Class 2 asphalt
- On either side of the bus loop entry provide compliant access ramp
- Provide crosswalk striping connecting the ramps

* All temporary construction fencing would be adjusted to accommodate the approach



Temporary walk path extension, Curb cut, and crosswalk

Underground Electrical servicing the BHS Sign

OWNER:

**BURLINGTON
SCHOOL DISTRICT**

CONTRACTOR:

WT
WHITING-TURNER

LEGEND:

Utilizing "Option B" would create the need to have pedestrian foot traffic crossing a primary construction entrance/exit for the BHS-BTC Project and directly interfacing with construction vehicles, equipment, and deliveries. It would pose a pretty significant impact to the mature 26" existing to remain maple tree. "Option B" would also require grade adjustments to allow for two(2) temporary ADA compliant ramps and a greater amount of new-temporary installs that would need to be relocated at a later point to allow for the rework of the Institute rd. and North Ave. intersection and then removed to allow for final hardscapes / landscapes to be installed. Please reference attached contract drawing L-100 for purposed landscape finishes.

Duration

June 01, 2023 to June 01, 2026

PROJECT NAME:

**BURLINGTON HIGH SCHOOL &
BURLINGTON TECHNICAL CENTER**

PROJECT NO.

WT-019955

REVISION DATE:

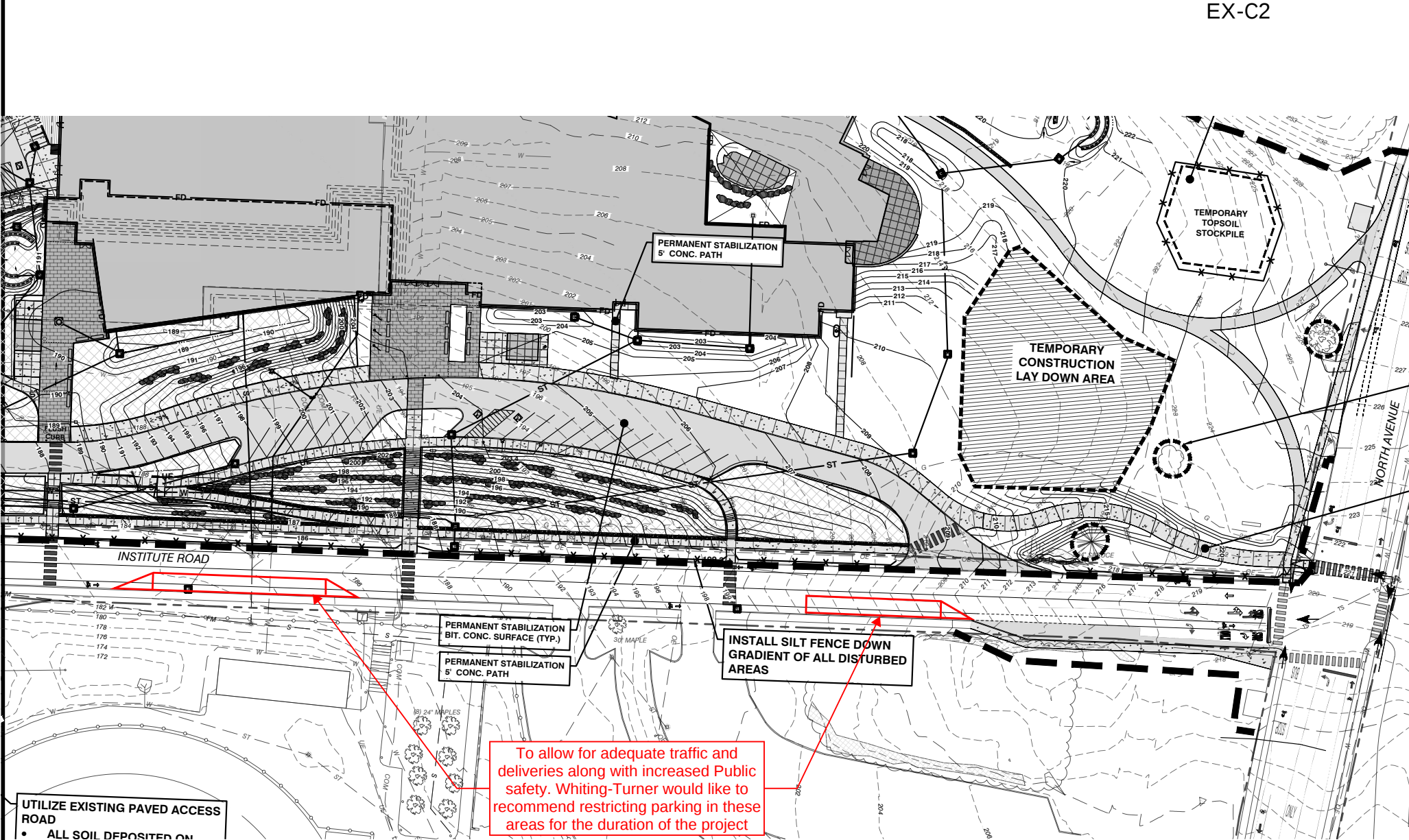
April 21, 2023

SHEET TITLE:

**BHS-BTC North Ave
ROW Encumbrance**

SHEET NO.

Option-B



Duration
July 01, 2023 to July 01, 2026

PROJECT NAME:
BURLINGTON HIGH SCHOOL &
BURLINGTON TECHNICAL CENTER

PROJECT NO.
WT-019955

REVISION DATE:
April 21 , 2023

SHEET TITLE:

BHS-BTC
Institute Road

SHEET NO.

Parking Restriction



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/8/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hickok & Boardman Insurance Group 346 Shelburne Rd Burlington, VT 05401	CONTACT NAME: Amy Merritt PHONE (A/C, No, Ext): (802) 383-1657 FAX (A/C, No): (802) 658-0541 E-MAIL ADDRESS: amerritt@hbinsurance.com
EX-D	INSURER(S) AFFORDING COVERAGE INSURER A : Liberty Mutual Fire Insurance Co. INSURER B : Liberty Insurance Corporation INSURER C : INSURER D : INSURER E : INSURER F :
INSURED City of Burlington School District 150 Colchester Avenue Suite 2 Burlington, VT 05401	NAIC # 23035 42404

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:	X		TB2-Z91-449805-032	6/30/2022	6/30/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Sexual Miscond. \$ 1,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			AS2-Z91-449805-022	6/30/2022	6/30/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			TH7-Z91-449805-072	6/30/2022	6/30/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 Products-Comple \$ 10,000,000
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	WC2-Z91-449805-082	6/30/2022	6/30/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

umbrella/excess policy provides additional limits of coverage above the educator's legal liability coverage (errors and omissions coverage.)

Additional insured status applies in favor of the City of Burlington under the general liability policy for the encumbrance application/permit per terms and conditions of the attached form LC 99 44 0718.

45 Days notice of cancellatoin apply in favor of the certificate holder, other than non-payment (15 days).

CERTIFICATE HOLDER

CANCELLATION

City of Burlington, Burlington Public Works 645 Pine Street Burlington, VT 05401	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

Policy Number
Issued by

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHOOL AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Schedule

Paragraph 2. of provision **L. Medical Payments Limitation – Students** applies only when a Student Medical Expense Limit is shown below:

Student Medical Expense Limit: \$ Each Student

A. Professional Services Liability

1. The following is added to Paragraph 1. **Insuring Agreement** under **Section I – Coverage A – Bodily Injury And Property Damage Liability**:

"Bodily injury" arising out of the rendering of or failure to render "covered professional services" to others by an "employee" shall be deemed to be caused by an "occurrence" but only if such acts or omissions are committed within the scope of his or her employment by you.

With respect to **Section III – Limits Of Insurance**, Paragraph 5., any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. With respect to the Professional Services Liability insurance provided by this provision, the following exclusion is added to Paragraph 2., **Exclusions** under **Section I – Coverage A – Bodily Injury And Property Damage Liability**:

Professional Services Liability

"Bodily injury" arising out of any act or omission that:

- (1) Is in fact criminal, fraudulent, malicious or deliberately dishonest; or
- (2) Occurs prior to the inception date of this coverage:
 - (a) Of which the insured had knowledge before the inception date of this coverage and reasonably could have expected a claim might result; or
 - (b) For which other valid and collectible insurance is available to the insured.

3. Except with respect to the ownership or operation of an infirmary with facilities for lodging and treatment or a public clinic or hospital, Paragraph 2.a.(1)(d) under **Section II – Who Is An Insured** does not apply to the rendering of or failure to render "covered professional services" by an "employee" within the scope of his or her employment by you.
4. For the purposes of coverage afforded under this endorsement, the following is added to **Section V – Definitions**:

"Covered professional services" means professional services, treatment, advice or instruction provided by nurses, psychologists, mental health counselors, psychometric counselors, occupational or physical therapists, hearing and speech therapists, athletic trainers, emergency medical technicians or paramedics.

5. The insurance afforded under this provision is excess over any of the other professional liability insurance whether primary, excess, contingent or on any other basis.

B. Medical Malpractice Limitation

With respect to the ownership or operation of an infirmary with facilities for lodging and treatment or a public clinic or hospital, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" caused by:

1. The rendering of or failure to render:
 - a. Medical, surgical, dental, x-ray, or nursing service, treatment, advice or instruction, or the related furnishing of food or beverages;
 - b. Any health or therapeutic service, treatment, advice or instruction; or
 - c. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming.
2. The furnishing or dispensing of or failure to furnish or dispense drugs or medical, dental or surgical supplies or appliances; or
3. The handling or treatment of dead bodies, including autopsies, organ donation or other procedures.

Nursing service, treatment, advice or instruction and health or therapeutic service, treatment, advice or instruction include but are not limited to the rendering of or failure to render "covered professional services" as defined in Paragraph **A.4.** of this endorsement.

C. School Broadcasting And Publication – Personal And Advertising Injury Liability Extension

1. Exclusion **j.(1)** under Paragraph **2.**, **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**, does not apply within the scope of your activities as a school.
2. The following is added to **Section IV – Commercial General Liability Conditions**:

Retraction Or Correction Of Erroneous Matter

Retraction or correction shall be promptly made of any matter which has been published or broadcasted through error or mistake, or which is untrue.

3. Paragraph **1.** under **Section V – Definitions** is replaced by:
 1. "Advertisement" means an announcement that is broadcast or published in the print, broadcast or electronic media to the general public or specific market segments about goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Announcements that are published include material placed on the Internet or on similar electronic means of communication, but only with respect to your goods, products or services for the purpose of attracting customers or supporters; and
 - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

D. Expected Or Intended Injury Extension

Exclusion **a. Expected Or Intended Injury** under Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

E. Pollution Exclusion – Exception For Classroom Instruction Activities

1. The following is added to provision **(1)(a)** of Exclusion **f., Pollution** under Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability**:

However, this exclusion does not apply to "bodily injury" or "property damage" that is caused, in whole or in part, by activities usual to classroom instruction on premises you own or rent.

2. When the Total Pollution Exclusion endorsement CG 21 55 or CG 21 65 is made a part of this Policy, Paragraph 1. above does not apply and the following is added to provision **(1)** of Exclusion **f. Pollution** under Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** as amended by either endorsement CG 21 55 or CG 21 65:

However, this exclusion does not apply to "bodily injury" or "property damage" that is caused, in whole or in part, by activities usual to classroom instruction on premises you own or rent.

F. Non-Owned Aircraft

Except with respect to the transportation of students, Exclusion **g., Aircraft, Auto Or Watercraft** under Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** does not apply to an aircraft that an insured does not own, provided:

1. It is hired or chartered by or loaned to an insured with a trained, paid crew;
2. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating him or her a commercial or airline pilot; and
3. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this Policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

G. Unmanned Aircraft

1. Exclusion **g., Aircraft, Auto Or Watercraft** under Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** is amended by adding the following:

This exclusion does not apply to unmanned aircraft operations if the:

- (1) Unmanned aircraft weighs less than 55 pounds and has a maximum airspeed of less than 100 miles per hour.
- (2) Operations comply with all Federal Aviation Administration Regulations and Requirements pertaining to unmanned aircraft; and

(3) Operations are included within the insured's operations as a school.

2. The following exclusion is added to Paragraph 2., **Exclusions** under **Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to "personal and advertising injury" arising out of unmanned aircraft operations included within the insured's operations as a school.

H. Non-Owned Watercraft

Except with respect to the transportation of students, Exclusion **g.(2), Aircraft, Auto Or Watercraft** under **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

(2) A watercraft you do not own that is not being used to carry persons or property for a charge;

The insurance afforded under this provision is excess over any of the other insurance whether primary, excess, contingent or on any other basis.

I. Transportation Of Students Limitation

With respect to the transportation of students, Exclusion **g., Aircraft, Auto Or Watercraft** of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, operation, use, "loading or unloading" or entrustment to others of any aircraft, "auto" or watercraft that is owned, operated or hired by any insured. For the purpose of this exclusion the word hired includes any contract to furnish transportation of your students to and from schools.

This exclusion applies even if the claims against the insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

J. Personal Property Of Others – Care, Custody Or Control Extension

1. We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" to personal property of others while in the insured's care, custody or control. This insurance applies only to "property damage" arising out of the insured's operations as a school.
2. Except with respect to "property damage" resulting from the use of elevators, Exclusion **j.(4)**, under Paragraph 2., **Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability**, does not apply to the coverage provided by this provision.
3. Subject to 4. below, the most we will pay for "property damage" to personal property of others while in the insured's care, custody or control arising from any one "occurrence" is \$100,000. This amount is subject to the Each Occurrence Limit described in Paragraph 5. of **Section III – Limits Of Insurance**.
4. The most we will pay for the sum of all "property damage" to personal property of others while in the insured's care, custody or control in an annual policy period is \$100,000. This amount is subject to the General Aggregate Limit described in Paragraph 2. of **Section III – Limits Of Insurance**.
5. We will not pay for "property damage", under this provision, until the amount of "property damage" exceeds \$250.

K. Medical Payments Extension

If **Coverage C – Medical Payments** is not otherwise excluded from this Coverage Part:

1. Paragraph 7. of **Section III – Limits Of Insurance** is replaced by the following:

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person other than your student. The Medical Expense Limit is the greater of:

- a. \$15,000; or
- b. The Medical Expense Limit shown in the Declarations.

2. Subparagraph (b) of Paragraph 1.a. **Insuring Agreement** under **Coverage C – Medical Payments** is replaced by the following:

(b) The expenses are incurred and reported to us within three years of the date of the accident; and

L. Medical Payments Limitation – Students

1. If **Coverage C – Medical Payments** is not otherwise excluded from this Coverage Part, the following is added to Paragraph 2., **Exclusions** under **Section I – Coverage C – Medical Payments**:

We will not pay expenses for "bodily injury" to your students.

2. When a Student Medical Expense Limit is shown in the Schedule of this endorsement, Paragraph 1. of this provision does not apply and the following is added to **Section III – Limits Of Insurance**:

Subject to 5. above, the Student Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one of your students.

M. Increased Cost Of Bail Bonds And Loss Of Earnings – Extension Of Supplementary Payments – Coverages A And B

Supplementary Payments – Coverages A And B is amended as follows:

1. Paragraph 1.b. is replaced by the following:

b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph 1.d. is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

N. Criminal Acts Defense Expense Coverage

1. The following is added to **Supplementary Payments – Coverages A And B**:

Subject to a Criminal Acts Defense Expense Coverage Aggregate Amount of \$50,000 and at your request, we will reimburse the insured for "defense expenses" incurred in the defense of a criminal action or criminal proceeding brought against the insured and commencing during the policy period but only if:

- a. The criminal action or criminal proceeding arose from acts committed within the scope of employment by you or while performing duties related to the conduct of your business; and

- b. The insured is acquitted or the charges are dropped; and
- c. The "defense expenses" are reported to us within one year of the acquittal or dropped charges.

We have no duty to defend the insured. The insured must select an attorney of his or her choice for representation in the criminal action or criminal proceeding. Our obligation to reimburse "defense expenses" ends when the Criminal Acts Defense Expense Coverage Aggregate Amount has been used up in the reimbursement of "defense expenses".

2. The coverage provided under Paragraph 1. of this provision does not apply to "defense expenses" incurred for:
 - a. Appeals after a guilty verdict is rendered at the first trial;
 - b. Any retrial upon an entry of a mistrial after verdict; or
 - c. Any retrial after appeal.
3. Regardless of the number of insureds, criminal actions or criminal proceedings, the Criminal Acts Defense Expense Coverage Aggregate Amount is the most we will reimburse all insureds under Paragraph 1. of this provision for the sum of all "defense expenses". If the policy period is for more than one year, the Criminal Acts Defense Expense Coverage Aggregate Amount applies separately to each consecutive annual period, and to any remaining period of less than 12 months starting with the beginning of the policy period. But if the policy period is extended after issuance for less than 12 months, the additional period will be deemed part of the last preceding period for the purposes of determining the Criminal Acts Defense Expense Coverage Aggregate Amount.
4. As used in this provision, "defense expenses" means those reasonable and necessary expenses that result from the defense of a specific criminal action or criminal proceeding brought against the insured, including:
 - a. Attorney and paralegal fees and expenses; and
 - b. Costs of legal proceedings

"Defense expenses" does not include loss of earnings or any fines or penalties imposed by law.
5. The insurance provided by this provision does not apply if there is available to the insured:
 - a. Any other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this Policy), contingent or on any other basis; or
 - b. Any other provision of this Policy

that would also apply to the expenses covered under this provision.

O. Extension Of Who Is An Insured

1. Paragraph 2. of **Section II – Who Is An Insured** is amended to include as an insured:
 - a. Any of the following but only with respect to their duties in connection with the positions described below:
 - (1) Any of your trustees or members of your Board of Governors if you are a private charitable or educational institution;
 - (2) Any of your board members or commissioners if you are a public board or commission; or
 - (3) Any student teachers teaching as part of their educational requirements.

- b. Any club or organization, if they have been specifically authorized by you, and only with respect to their use of your premises and their activities elsewhere that are within the scope of the authorized purpose of such organization. Clubs or organizations include, but are not limited to:

- (1) Parent support groups or booster clubs;

- (2) Student groups; or

- (3) Alumni groups.

A club's or organization's directors, officers or members are also insureds, while acting within the scope of their duties for such club or organization.

- c. Any affiliated subsidiary, organization, board, commission, foundation or endowment that you own or control more than 50% of such entity.

The insurance provided by this provision does not apply if there is available to the insured any other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this Policy), contingent or on any other basis that would apply to the insurance provided under this provision.

- d. Any of your students who are members of a safety patrol which you have organized or operate, but only for "bodily injury" or "property damage" that occurs while performing duties related to the conduct of such safety patrol. This includes the parents or legal guardian of such student, but only with respect to his or her liability as a parent or guardian because of "bodily injury" or "property damage" arising out of the operation of such safety patrol.

The insurance provided by this provision is excess over any of the other insurance available to the insured, whether primary, excess, contingent or on any other basis.

2. Definitions **5.** and **19.** under **Section V – Definitions**, are replaced by the following:

- 5. "Employee" includes a "leased worker" or a substitute teacher. "Employee" does not include a "temporary worker".

- 19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions. "Temporary worker" does not include a substitute teacher.

P. Coverages A and B Extension – Co-Employees And Volunteer Workers

Except with respect to "bodily injury" or "personal and advertising injury" to a person arising out of employment-related practices, **Section II – Who Is An Insured** is modified as follows:

1. Paragraph **2.a.(1)(a)** is replaced by the following:

- 2. a. (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), or to your members (if you are a limited liability company);

2. Paragraph **2.a.(1)(b)** is deleted.

Employment-related practices means refusal to employ that person, termination of that person's employment, or practices, policies, acts or omissions related to employment, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person.

Q. Newly Acquired Or Formed Organizations

Paragraph **3.a.** of **Section II – Who Is An Insured** is replaced by the following:

- a.** Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;

R. Additional Insureds – By Contract, Agreement Or Permit

- 1.** Paragraph **2.** under **Section II – Who Is An Insured** is amended to include as an insured any person or organization when you and such person or organization have agreed in writing in a contract, agreement or permit that such person or organization be added as an additional insured on your Policy to provide insurance such as is afforded under this Coverage Part. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or part, by:

- a.** Your ongoing operations performed for that person or organization;
- b.** Premises or facilities owned or used by you; or
- c.** Your maintenance, operation or use of equipment rented or leased to you by such person or organization.

With respect to Paragraph **1.a.** above, a person's or organization's status as an insured under this provision ends when your operations for that person or organization are completed.

With respect to Paragraph **1.b.** above, a person's or organization's status as an insured under this provision ends when their contract or agreement with you for such premises or facilities ends.

However:

- a.** The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b.** If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- 2.** This provision does not apply:

- a.** Unless the written contract or agreement has been executed, or permit has been issued, prior to the "bodily injury", "property damage" or "personal and advertising injury";
- b.** To "bodily injury" or "property damage" occurring after:
 - (1)** All work, including materials, parts or equipment furnished in connection with such work, in the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
 - (2)** That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project;
- c.** To the rendering of or failure to render any professional services including, but not limited to, any professional architectural, engineering or surveying services such as:
 - (1)** The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - (2)** Supervisory, inspection, architectural or engineering activities;

- d. To "bodily injury", "property damage" or "personal and advertising injury" arising out of any act, error or omissions that results from the additional insured's sole negligence or wrongdoing;
 - e. To any lessor of equipment after the equipment lease expires, or
 - f. To any person or organization included as an insured by a separate additional insured endorsement issued by us and made a part of this Policy.
3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

S. Additional Insured – Vendors

1. Paragraph 2. of **Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) that distribute or sell "your products" in the regular course of their business, hereafter referred to as vendors, to whom you are obligated by a written agreement to procure additional insured coverage under your Policy, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

2. Exclusions

With respect to the insurance provided by this provision, the following additional exclusions apply:

- a. This insurance does not apply to:
 - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (2) Any express warranty unauthorized by you;
 - (3) Any physical or chemical change in the product made intentionally by the vendor;
 - (4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (a) The exceptions contained in Paragraphs (4) or (6); or
 - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- b. This insurance does not apply to any insured person or organization, from which you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- 3. The insurance afforded to any person or organization as an insured under this provision:
 - a. Applies only to coverage and minimum limits of insurance required by the written agreement, but in no event exceeds either the scope of coverage or the Limits of Insurance provided by this Policy;
 - b. Does not apply to any person or organization for any "bodily injury" or "property damage" if any other additional insured endorsement attached to this Policy applies to that person or organization with regard to the "bodily injury" or "property damage";
 - c. Applies only if the "bodily injury" or "property damage" occurs subsequent to the execution of the written agreement; and
 - d. Applies only if the written agreement is in effect at the time the "bodily injury" or "property damage" occurs.

T. Primary And Noncontributory Additional Insured Extension

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this Policy.

The following is added to Condition 4., **Other Insurance** under **Section IV – Commercial General Liability Conditions**:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your Policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured. Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

U. Property Damage Liability – Elevators

1. Paragraphs (3), (4), and (6) under Exclusion j., **Damage To Property** of **Section I – Coverage A – Bodily Injury And Property Damage Liability**, do not apply if such "property damage" results from the use of elevators.
2. The insurance afforded by this provision is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is property insurance.

V. Damage By Fire, Lightning, Explosion, Smoke Or Leakage

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. **Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability**:

- a. The fourth from the last Paragraph of Exclusion j., **Damage To Property** is replaced by the following:

Paragraphs (1), (3), and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance**.

- b. The last Paragraph is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance**.

2. Paragraph 6. under **Section III – Limits Of Insurance**, is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems, while rented to you or temporarily occupied by you with permission of the owner. This limit is the greater of:

- a. \$500,000; or

- b. The amount shown in the Declarations for Damage To Premises Rented To You Limit.

3. The word "fire" is replaced with "fire, lightning, explosion, smoke or leakage from automatic fire protection systems" where it appears in:

- a. **Section IV – Commercial General Liability Conditions**, Condition 4., **Other Insurance**, Paragraph b. **Excess Insurance**, Paragraph (1)(a)(ii); and

- b. **Section V – Definitions**, Paragraph 9.a.

W. Location(s) General Aggregate Limit

1. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **Section I – Coverage A – Bodily Injury And Property Damage Liability**, and for all medical expenses caused by accidents under **Section I – Coverage C – Medical Payments**, which can be attributed only to operations at a single "location":

- a. A separate Location General Aggregate Limit applies to each "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

- b. The Location General Aggregate Limit is the most we will pay for the sum of all damages under **Section I – Coverage A – Bodily Injury And Property Damage Liability**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **Section I – Coverage C – Medical Payments** regardless of the number of:

- (1) Insureds;

- (2) Claims made or "suits" brought; or

- (3) Persons or organizations making claims or bringing "suits".

- c. Any payments made under **Section I – Coverage A – Bodily Injury And Property Damage Liability** for damages or under **Section I – Coverage C – Medical Payments** for medical expenses shall reduce the Location General Aggregate Limit for that "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Location General Aggregate Limit for any other "location".

- d. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You, and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Location General Aggregate Limit.

- 2. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **Section I – Coverage A – Bodily Injury And Property Damage Liability**, and for all medical expenses caused by accidents under **Section I – Coverage C – Medical Payments**, which cannot be attributed only to operations at a single "location":

- a. Any payments made under **Coverage A – Bodily Injury And Property Damage Liability** for damages or under **Coverage C – Medical Payments** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit whichever is applicable; and

- b. Such payments shall not reduce any Location General Aggregate Limit.

- 3. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Location General Aggregate Limit.

- 4. For the purposes of this provision, the following is added to **Section V – Definitions**:

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

- 5. The provisions of **Section III – Limits Of Insurance** not otherwise modified by this provision shall continue to apply as stipulated.

X. Waiver Of Transfer Of Rights Of Recovery Against Others To Us – When Required In A Written Contract Or Agreement With You

The following Paragraph is added to Condition 8., **Transfer Of Rights Of Recovery Against Others To Us** under **Section IV – Commercial General Liability Conditions**:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

- a. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and

- b. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

Y. Knowledge Of Occurrence, Offense, Claim Or Suit

Except with respect to Professional Liability Paragraph 2.(2)(a) in Section A., **Professional Services Liability** of this endorsement, the following is added to Condition 2., **Duties In The Event Of Occurrence, Offense, Claim Or Suit** under **Section IV – Commercial General Liability Conditions**:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless your school superintendent, business manager or a person who has been designated by them to receive reports of "occurrences", offenses, claims and "suits" shall have received such notice from the agent, servant or "employee".

Z. Failure To Disclose Hazards And Prior Occurrences

The following is added to Condition 6., **Representations** under **Section IV – Commercial General Liability Conditions**:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the Policy shall not prejudice the coverage afforded by this Policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

AA.Liberalization Clause

If we revise this School Amendatory Endorsement to provide more coverage without additional premium charge, your Policy will automatically provide the coverage as of the day the revision is effective in your state.

BB.Bodily Injury Redefined

The definition of "bodily injury" in Paragraph 3. of **Section V – Definitions** is replaced by the following:

- 3. "Bodily injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.



Home (/DLLLicenseManagment/s/)

Application
DLL - Application - 29246

Approve

Reject

Applicant Action Required

Town Payment Received

Download

APPLICATION DETAILS

RELATED INFORMATION

✓ Application Information

DLL - Application Id

DLL - Application - 29246

External Status

Application sent to municipality

Business Entity Name

RGS NEPALI MARKET

Town Clerk/ Municipal Jurisdiction

Burlington

Phone number:

New - tobacco -

Historical Id

TOBC

Applicant Email

laxmiasianmart1563@gmail.com (<mailto:laxmiasianmart1563@gmail.com>)

Application Type **1**

License

Renewal Application

Application For

Tobacco License

Applicant Action Comments

Town User Approval/Rejection Comments

You have submitted this application to the wrong town. This should be sent to Burlington, not the town of Chittenden.

License/Permit Location Description

Eligibility of Tobacco Fee waiver

Yes

Town Fee

0

Business Entity Phone

6155094932

✓ Location Details

Physical Location Name **1**

RGS NEPALI MARKET

Physical Location City/Town

Burlington

Physical Location Street 1

1563 North Avenue

Physical Location State

Vermont



Home (/DLLLicenseManagment/s/)

Application
DLL - Application - 29305

Approve

Reject

Applicant Action Required

Town Payment Received

Download

APPLICATION DETAILS

RELATED INFORMATION

✓ Application Information

Primary Phone No

Primary Contact Person

DLL - Application Id

DLL - Application - 29305

Internal Status

Application sent to municipality

Business Entity Name

RGS NEPALI MARKET

External Status

Application sent to municipality

Business Entity Phone

6155094932

Historical Id

TSEP

Foundational License

Application Type ¹

Permit

Renewal Application

Application Category

Tobacco

Town User Approval/Rejection Comments

Application For

Tobacco Substitute Endorsement

Contact Engagement

Applicant Email

laxmiasianmart1563@gmail.com (<mailto:laxmiasianmart1563@gmail.com>)

Applicant Name:

Applicant Action Comments

License/Permit Location Description

New - tobacco substitute
Endorsement -

✓ Event Details

Start date of event