



Monday, November 20, 2023, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

5:00 pm, Bushor Conference Room, 1st Floor City Hall OR Remotely via ZOOM:

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1. Agenda

Subject	1.1. Motion to adopt agenda
Meeting	November 20, 2023 - Special Board of Finance Meeting - Monday, November 20, 2023, 5:00 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 adopt agenda

2. Public Forum

Subject	2.1. Verbal Comments
Meeting	November 20, 2023 - Special Board of Finance Meeting - Monday, November 20, 2023, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	2. Public Forum
Department	Council and Board
Type	Action Procedural

3. For Approval and Recommendation to the City Council

Subject	3.1. Great Streets Main Street Construction Award and Contract Amendments - DPW
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Meeting	November 20, 2023 - Special Board of Finance Meeting - Monday, November 20, 2023, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	3. For Approval and Recommendation to the City Council
Department	Public Works Department
Type	Action
Recommended Action	1. To approve and recommend that the City Council authorize the Director of Public Works to execute Amendment #8 to the design contract, subject to City Attorney review and approval, with Vanasse Hangen Brustlin, Inc. (VHB) in the amount of \$614,811.00, bringing the total contract value up to \$3,160,488.00, and authorize the use of an additional \$61,481.00 in contingency funds to be available to use toward any necessary future contract amendments needed to accomplish the design work herein contemplated, and further authorize execution of any such necessary amendments upon review and approval by the City Attorney's Office, for a total authorized amount of \$3,221,969.00 for the development of the design of the Great Streets Main Street project. 2. To approve and recommend that the City Council authorize the Director of Public Works to execute Amendment #1 to the resident engineer contract, subject to City Attorney review and approval, with EIV Technical Services in the amount of \$298,974.00, bringing the total contract value up to \$2,098,974.00, and authorize the use of an additional \$209,897.00 in contingency funds to be available to use toward any necessary future contract amendments needed to accomplish the services detailed herein, and further authorize execution of any such necessary amendments upon review and approval by the City Attorney's Office, for a total authorized amount of \$2,308,871.00 for resident engineering and outreach consulting services for the Great Streets Main Street project. 3. To approve and recommend that the City Council authorize the Director of Burlington City Arts to execute contract amendments with the Great Streets Main Street selected Artists from the current total approved amount of \$66,696 to a total authorized Phase I and Phase II project expenditure in the amount of \$474,626, subject to review and approval by the City Attorney's Office, and to further authorize the use of an additional \$in contingency funds to be available to use toward future amendments for any of the artist contracts, and further authorize execution of any such necessary amendments upon review and approval by the City Attorney's Office, for a total authorized amount of \$500,000.00: a. A contract with Lydia Kern in an amount not to exceed \$90,600 for fabrication of artwork; b. A contract with WOWHAUS in an amount not to exceed \$99,000 for fabrication of artwork; c. A contract with Pixel Patch Creative, LLC in an amount not to exceed \$145,000 for fabrication of artwork; and d. A contract with Nancy Winship Milliken Studio, LLC in an amount not to exceed \$140,026 for fabrication of artwork.

4. To approve and recommend that the City Council authorize the Director of Public Works to execute a Memorandum of Understanding, subject to City Attorney review and approval, with Burlington Electric Department in the amount of \$399,039, for the lighting construction of the Great Streets Main Street project.

5. To approve and recommend that the City Council authorize the Director of Public Works to execute the following initial construction contract and future necessary contract amendments with S.D. Ireland Brothers Corporation to complete the reduced project scope as described herein for the Great Streets Main Streets project, for a total approved expenditure not to exceed \$25,962,543.26, subject to City Attorney Office review and approval:

- a. an initial construction contract in an amount not to exceed \$21,700,572.20; and,
- b. any such future contract amendments necessary to carry out the reduced project scope, in additional amounts not to exceed \$2,596,254.83 in contingency funds and \$4,261,971.06 in bond premium funds, totaling \$28,558,798.09 in additional reserve funds, provided that use of the bond premium funds shall be subject to the Vermont Economic Progress Council's (VEPC) review and approval.

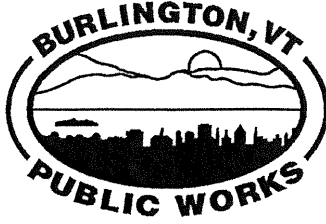
6. To approve and recommend that the City Council authorize the Chief Administrative Officer, or their designee, to affect all necessary budget amendments and transfers of funds to and from the above-referenced funding sources as needed to pay the above-referenced project expenses in FY24 and Overall Project Budgets, as further detailed in Attachments C and D, provided that such budget amendment and transfers of funds as detailed in Attachment D involving bond premium funds shall be subject to VEPC's prior review and approval of the use of such funds.

Subject	3.2. District Energy Franchise Fee Agreement - CAO
Meeting	November 20, 2023 - Special Board of Finance Meeting - Monday, November 20, 2023, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	3. For Approval and Recommendation to the City Council
Department	Clerk/Treasurer's Office
Type	Action
Recommended Action	to approve and recommend that the City Council approve and authorize the Mayor to sign the Franchise Fee Agreement regarding payment of Franchise Fees with the District Energy Project, subject to review and approval by the City Attorney's office

4. Adjournment

Subject	4.1. Motion to adjourn
Meeting	November 20, 2023 - Special Board of Finance Meeting - Monday, November 20, 2023, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Adjournment
Department	Council and Board

Type	Action Procedural
Recommended Action	Motion to adjourn



CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS

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MEMORANDUM

To: Board of Finance and City Council
Fr: Laura Wheelock, P.E., Senior Public Works Engineer
Olivia Darisse, P.E., Public Works Engineer
CC: Chapin Spencer, Director of Public Works
Norman Baldwin, P.E., Assistant Director Public Works and City Engineer
Ashley Parker, Capital Program Director
Megan Moir, Water Resources Division Director
Brian Pine, Director of Community and Economic Development Office

Re: Great Streets Main Street Construction Award and Contract Amendments
Date: November 20, 2023 (Board of Finance & City Council)

I. SUMMARY OF REQUESTS

The Department of Public Works (DPW) is seeking Board of Finance recommendation and City Council authorization to:

1. Execute Amendment with Vanasse Hangen Brustlin, Inc.
2. Execute Amendment with EIV Technical Services
3. Execute Amendments with four artists (with Burlington City Arts)
4. Execute Memorandum of Understanding with Burlington Electric Department
5. Execute Construction Contract with S.D. Ireland Brothers Corporation
6. Execute Budget Amendment

II. PROJECT UPDATE

The City project team has been working with engineering consultant Vanasse Hangen Brustlin, Inc. (VHB) on the Main Street design since October of 2021. VHB submitted final design plans at the end of July and has been working with the City through the bidding process. After receiving City Council authorization in June, the City brought EIV Technical Services on as the project's resident engineer and outreach consultant. EIV has been providing valuable input and peer review of project documents as well as pre-construction outreach services.

The public vote in March 2015 authorized the initiative's first efforts in the City's Downtown Tax Increment Financing (DT-TIF) District by supporting the borrowing of \$10,000,000 to make new investments in downtown public infrastructure to ensure that Burlington residents have a downtown that is a vibrant, walkable and sustainable urban center. Voters additionally supported the Great Streets

Main Street Project at the March 2022 Town Meeting Day public vote with support to secure an additional \$25,920,000 in debt, matching the Vermont Economic Progress Council (VEPC) approved borrowing amount of \$35,920,000. In August 2022, the City then issued Bond Series 2022B in the original principal amount of \$30,120,000 to support the improvements associated with the Great Streets Main Street project.

III. CONTRACTOR BIDS AND SELECTION

This item was presented as a work session item at the Board of Finance on November 13, 2023. DPW staff issued an Invitation for Bids on July 27, 2023, and opened competitive bids on September 19, 2023. If authorization to award the construction contract to the low bidder is granted by the City Council tonight, the project team anticipates that construction will begin as early as late November.

Two bids were received in response to the Invitation to Bid. The total bid prices for each are shown in Table 1 – Bid Results below.

Table 1 – Bid Results

Contractor	Bid	Add Alternate 1
Kubricky-Jointa Lime, LLC	\$46,714,545.00	\$140,279.00
S.D. Ireland Brothers Corporation	\$37,364,229.00	\$124,570.00

S.D. Ireland was determined to be the lowest responsive qualified bidder for the project with a total bid price of \$37,364,229.00. The City's design consultant, VHB prepared a bid analysis of both bids received compared to the Engineer's Estimate, which recommended that S.D. Ireland's bid should be accepted. The Bid Analysis is included in Attachment A.

The low bid for this project was nearly 50% higher than the engineer's estimate of \$24,900,000. This can be attributed to the dramatic rise in material and operating costs over the last few years and it's continued volatility. The most recent Vermont Agency of Transportation (VTrans) standard pricing, which the design engineers used to complete the estimate, does not adequately account for recent or anticipated inflation. The project team would also like to acknowledge that as a large, unique project with complex means and methods, a number of items also presented challenges developing accurate estimates such as contaminated soils management, mobilization and demobilization, traffic management, and utility relocations.

Initially, the City team responded to the high costs by developing two alternative solutions:

- A) Identifying additional funding sources that could be used toward this project, and eliminating or substituting (value engineering) certain bid items in order to mitigate high construction costs. The multi-departmental value engineering effort evaluated cost-saving strategies developed by both S.D. Ireland and the project team. The advantage of this option is constructing all blocks under the same project, guaranteeing continuity of improved facilities between the Downtown and Waterfront districts within the near term, and eliminating the need to construct the project in phases. The disadvantage of this option is that removing or substituting design elements would deviate from design standards, compromise longevity, and

potentially impact future initiatives by committing several City Capital funding sources to this project.

- B) Reducing the scope of the project from six blocks to three blocks. The advantages to reducing the scope of the project include maintaining the original design within the downtown core – from Pine Street to South Winooski Avenue (“Phase 1”) – instead of compromising the longevity and functionality of all six blocks by eliminating or substituting various design elements; affords the City the opportunity to seek alternative funding sources for Battery through Pine Street (“Phase 2”), such as state and federal grants, while leaving City funds available to other City initiatives; and takes advantage of the opportunity to build the South Winooski to South Union block into the redevelopment effort for Memorial Auditorium and the entire area known as the Gateway Block. The disadvantages of this approach include the need to divide the Main Street redevelopment into multiple phases, requiring a higher level of effort. In addition, any federal funds awarded will require the City to satisfy Federal processes such as National Environmental Policy Act (NEPA) and Right-of-Way clearance. These processes will add time to the project’s schedule.

In evaluating Option A, the project team considered a number of value engineering items as well as potential resources of additional funding and determined that this option was not financially feasible due to a funding shortfall of approximately \$2 million. After reviewing these findings with the design consultants, S. D. Ireland, and the Administration, the City team determined that Option B was the most fiscally responsible option, while preserving preferred design elements and maximizing Main Street’s longevity. The transition from diagonal to parallel parking will be implemented starting at Battery Street, as planned, and bicycle network connectivity will be maintained by adding on-street bicycle facilities in each direction – which will connect the on-street facilities on lower Main Street to the off-street facilities starting at Pine Street. The work will include full improvements (signaling, crosswalks, bump outs, and streetscaping) at the Pine Street, St. Paul Street, Church Street, and South Winooski Avenue intersections – three of which are high-crash locations – with new infrastructure tying in west and east of the Pine Street and South Winooski Avenue, respectively. This approach includes a selection of value engineering items that the City identified as advantageous to the project:

- *Eliminate Improvements between South Winooski Avenue and South Union Street*
The City team proposes the elimination of streetscape improvements from South Winooski Avenue to South Union Street from the project. Elimination of this work would result in an overall savings of roughly \$2.6 million. This change includes elimination of curb adjustments, new sidewalk, bike paths, and streetscape features. The ravine sewer work will remain, and the contractor will be required to perform limited work on underground utilities as it relates to tying in the improvements being made west of South Winooski Avenue. Upon completion of the ravine sewer work, this block will be milled and resurfaced. On-street bicycle facilities will be added to maintain bicycle network connectivity on this block. As mentioned above, the streetscape improvements on this block will be included as part of the Memorial Auditorium and Gateway Block redevelopment. The developer will be required to implement improvements in accordance with the Great

Streets Main Street final plans developed as part of this project in order to maintain consistency along the corridor and meet required design standards.

- *Traffic Control*
S.D. Ireland has proposed a more flexible traffic control approach to reduce project costs and overall timeline. As opposed to the City's preferred approach of maintaining vehicular and bicycle access on blocks actively under construction, S.D. Ireland proposes the closure of up to two blocks and one intersection at a time, which could last anywhere from 4 to 8 weeks depending on location and construction activity. Closures would be evaluated case-by-case on the basis location, time of year, safety, and detour plans. The contractor will be required to accommodate tenants and businesses who need access to driveways, trash and recycling service, loading and unloading of delivery vehicles, and emergency vehicles. Sidewalks and businesses will remain accessible to pedestrians. Support will be provided for business patrons with accessibility needs. Support for maintaining vehicular access through active construction areas was split within the business community on Main Street, with some businesses were supportive of maintaining vehicular access through the construction zone, and others preferring closures to promote more efficient completion of the work. Additional information on business outreach is provided in Section IX. Business and Public Outreach.
- *Eliminate Use of the Municipal Parking Lot for Construction Staging*
S.D. Ireland elected to renounce the option of renting the Municipal parking lot (at the corner of Main Street and South Winooski) to use as a construction staging area. The option to rent this lot at a rate of \$171,000 per calendar year was included in the bid documents as an option available to all bidders, but not required. Without the utilization of this staging area, the City saves a total of \$513,000 in rental reimbursement fees.
- *Concrete Bike Lanes*
S.D. Ireland suggested substituting colored concrete for asphalt in the bike lanes. This substitution gives S.D. Ireland the ability to complete this work themselves as opposed to hiring a subcontractor, which contributes a net savings to the project. The City feels concrete will be a more durable solution, which will allow for cleaner repairs and easier maintenance in the future. The proposed color will add a warm element to the streetscape.
- *Remove Items from Base Bid and move to Add Alternative #2*
Several items were removed from the Base Bid and moved to an Add Alternative bid schedule in order to preserve project contingency funds in the early phases of construction. The City will seek to add items from the Add Alternative #2 Bid Schedule back into the contract as construction progresses and contingency funding allows. These items total \$1,728,035.00.

S.D. Ireland provided a revised bid based on the scope reduction and value engineering items as follows:

Base Bid (Revised Project Scope)	\$25,837,973.26
Add Alternative #1	\$124,570.00

DPW recommends advancing the award of the Base Bid for the Revised Project Scope and Add Alternative #1 at this time for a contract total of \$25,962,543.26 with a 10% contingency of \$2,596,254.83 resulting in a total amount of \$28,550,798.09. DPW is seeking City Council approval of an initial contract that fits will utilize Downtown TIF proceeds that are authorized by VEPC, as well as additional City resources as noted in this memo. City staff are also looking for support to move forward with a future budget amendment, pending VEPC authorization to utilize premiums the City received as part of its financing strategy for the Downtown TIF in August 2022. Staff expects VEPC to review a substantial change request related to the use of these premiums in late January/February 2024, with a final decision expected in May or June of 2024. Upon receipt of VEPC approval, staff would like to execute the proposed budget amendment to incorporate the premiums into the project budget. Please refer to Section X. Project Financials for the project budget and details on bond premiums.

IV. CONSTRUCTION SCHEDULE

If the project team receives authorization to award the contract to S.D. Ireland, the Notice to Proceed will be issued as soon as late November. The contractor is required by contract to begin work no later than April 8, 2024, although SDI anticipates beginning work as soon as the Notice to Proceed is issued and continuing work throughout the winter. Within their proposed schedule they have communicated their plans to begin with replacement of the ravine sewer on Church Street, which they have projected to complete in Spring 2024. Per bid documents and proposed contract, the required substantial completion date is November 1, 2026. With the reduction of scope, we anticipate that the completion date will be revised to the end of August 2026, but we have not formally amended the completion date in the bid documents or proposed contract. The project team will have the ability to review and approve the contractor's proposed schedule as a project submittal.

V. DESIGN CONSULTANT CONTRACT AMENDMENT

DPW is seeking to amend VHB's existing contract to include supplemental construction support services, as detailed below. These supplemental services include Water Resources Engineering construction support, Qualified Environmental Professional services, and additional fees for revising the plans according to the reduced scope of work. DPW is also seeking to supplement VHB's contract with existing design fees to cover the plan revisions necessary as a result of reducing the scope of work to three blocks. This effort includes tying in proposed infrastructure at each end of the project, revising notes and details, and revising quantities. Together, these services make up Amendment #8 to VHB's contract in the amount of \$614,811.00, bringing the total contract value up to \$3,160,488.00.

WATER RESOURCES FIELD ENGINEER

DPW is seeking to add Water Resources Field Engineering services through Amendment #8 to VHB's contract, where VHB's subconsultant, Dufresne Group, will act as the City's field representative during the construction of water and sewer infrastructure work. As a current subconsultant of VHB, Dufresne Group completed the design of the water and sewer system for the Main Street project, and is intimately familiar with the City's existing systems and the work that will be performed under this contract. Dufresne Group has a strong working relationship with the City's Water Resources Division,

and is expected to maintain a strong line of communication between field and office staff throughout the project. Amendment #8 to VHB's contract includes \$182,400.00 to be used toward the construction support services that Dufresne Group will be providing.

QUALIFIED ENVIRONMENTAL PROFESSIONAL

VHB performed environmental due diligence and soils pre-characterization assessments and identified potential areas of concern throughout the project area. Laboratory analytical results verified that several of these areas contain contaminants of concern (COCs) with concentrations exceeding regulatory standards. In order to properly manage these soils during construction, VHB developed a Soils Management Plan in cooperation with the Vermont Department of Environmental Conservation (VT-DEC). The Soils Management Plan requires on-site observation by a Qualified Environmental Professional (QEP). DPW is seeking to add QEP services to VHB's contract. The role of the QEP is to provide qualified environmental oversight during construction to monitor excavation and soil handling operations and document daily activities to ensure compliance with the project's approved Soil Management Plan. Amendment #8 to VHB's contract includes \$304,137.00 to be used toward the Qualified Environmental Professional services.

VI. RESIDENT ENGINEER AND OUTREACH CONSULTANT CONTRACT AMENDMENT

The City procured EIV Technical Services as the project Resident Engineer and Outreach Consultant following Board of Finance and City Council authorization June 5th, 2023. EIV has since provided a constructability review of the project plans and bid documents, and has provided valuable support and input to the City throughout the project bidding process. EIV's original proposal did not include construction resident engineering or inspection services for winter months (December – March), as the City had not yet received bids or proposed construction schedules and was uncertain if construction would occur during the winter. The low bidder's schedule proposes work throughout the winter months, so EIV's original contract needs to be amended to include additional hours. EIV is also requesting a fee for their field office, which was not included in the original proposal or the contractor's bid. The amendment also takes into account the reduction in project scope which translates to a reduction in EIV's hours toward the project. EIV's original contract was executed in the amount of \$1,636,876.00 with use of an additional \$163,124.00 (10%) in contingency, for a total authorized amount of \$1,800,000.00. We are seeking approval to amend their contract by \$298,974.00, bringing the total amended contract amount to \$2,098,974.00, plus \$209,897.00 in contingency funds bringing the total authorized amount to \$2,308,871.00.

VII. PUBLIC ART CONTRACT AMENDMENTS

In April, DPW and BCA received Board of Finance recommendation and City Council authorization to execute contracts with artists Lydia Kern, Nancy Winship Milliken Studio LLC, Pixel Patch Creative LLC, and WOWHAUS for Phase 1 - design of public art installations for the Main Street project, utilizing Downtown Tax Incremental Financing (DT-TIF).

The City team collaborated with the artists on the Phase I installation designs from May through June as the final design of the project was completed. As the project team moves toward construction, A combined total budget of \$500,000 was earmarked for Phase 1 (Design) and Phase 2 (Fabrication). This request will allocate \$474,626 towards the design/fabrication/installation contracts with the four artists and \$25,374 in construction contingency for the public art projects.

Artist	Project	Phase 1	Phase 2	Total Project Budget
Nancy Winship Milliken Studio LLC	LakeBones Archways	\$15,550	\$124,476	\$140,026
WOWHAUS	Snail Family AKA Magnus	\$14,561	\$84,439	\$99,000
Pixel Patch Creative LLC	Block by Block	\$28,500	\$116,500	\$145,000
Lydia C Kern Studio	Anthology - Single Walkthrough	\$8,085	\$82,515	\$90,600
			TOTAL	\$474,626

The project team, including BCA, understands that there is a desire to evaluate the financial impact of the procured public art projects on the overall project scope. In June of 2021, the City Council passed a 1% for public art ordinance. In accordance with this ordinance, the project team set aside \$500,000 for public art to be incorporated into the Main Street project. Public art is identified as an integral component of the Great Street Standards that have been adopted by the City of Burlington, recognizing that public art contributes heavily to a unique sense of place, and that the selection process builds pride and ownership of our public spaces across many stakeholders.

With the reduction in scope for this phase of the project, an approximate \$120,000 savings could be achieved through a public art budget reduction after accounting for the 1% ordinance; The City team does not recommend reducing the public art budget for the following reasons:

- Respecting community engagement. Since the Call-to-Artists was issued on November 1, 2022, a great deal of time from citizens, business owners and the project team has been invested in the procurement of artists and the four public art projects that have been presented and integrated into Main Street's design to date.
- Where cuts can be achieved. A reduction in the public art budget at this stage in the process would require cutting an entire public art work from the project.
- Selection process. Removing an entire public art work would necessitate reengaging the original selection panel and the Public Art Committee to determine which project is removed from the scope.
- Added costs without benefit. Locations for artworks have been defined in the scope; removing one project will affect the design timeline and add new costs.

At this time, DPW, in collaboration with BCA, seek Board of Finance recommendation and City Council authorization to enter into Amendment #1 to contracts with Lydia Kern, Nancy Winship Milliken Studio LLC, Pixel Patch Creative LLC, and WOWHAUS for Phase 2- fabrication of public art installations. Materials procurement and fabrication efforts will start immediately upon amendment execution as required for coordination with the contractor's schedule.

The Great Streets Main Street design team, DPW, and BCA worked with each of the artists in Phase 1 to confirm the final location of their piece(s) within the corridor and the public art procured. All pieces shall be placed in their designated sites within the limits of the Great Streets Main Street Project that extends

along Main Street from Battery Street to Union Street, and within the identified Downtown TIF District limits. Anthology will be located on the north sidewalk of Main Street south of City Hall Park. Snail Family will be located on the south sidewalk of Main Street in front of the Chittenden County Courthouse. Block by Block will be located on the north sidewalk of Main Street at the intersection of Church and Main Street.

Currently, DPW and BCA are working with Nancy Winship Miliken on sighting her piece “Lakebones Arch”. The piece was originally slated over the sidewalk in front of 60 Main Street. Since the reduction in project scope does not include the block between Battery Street and South Champlain Street, the project team is working to site the piece adjacent to 106 Main Street. The alternative location will need to fit within the constraints of the new design, as well as satisfy the artist’s vision. The construction contingency included in the public art budget is expected to cover additional effort and redesign associated with this change and will be noted in the Artist’s amended budget. Similar to a typical design contract, the proposed motion seeks to obtain authorization to enter into a Phase 2 contract with the Artists, and to obtain authorization to use public art contingency for design revisions. This will allow the City to amend Nancy’s contract to account for design revisions related to the new proposed location without delaying the fabrication process, and does not pose any major financial risks to the City.

VIII. MEMORANDUM OF UNDERSTANDING WITH BURLINGTON ELECTRIC DEPARTMENT

DPW and Burlington Electric Department (BED) are working to jointly enter into a new Memorandum of Understanding (MOU) for construction work of decorative street lighting associated with this project. This MOU will lay out a scope for BED to facilitate implementation of new lighting and electric along the project limits. Per BED’s Lighting Policy, the project shall be responsible for Decorative Street Lighting and Standard Street Lighting costs for any sections that currently meet Illuminating Engineering Society (IES) recommendations. BED will be responsible for costs for Standard Street Lighting for sections that do not currently meet IES recommendations. The curb line and reconstruction of the street trigger the need for a full redesign and illumination with IES compliant lighting. BED’s estimate of the standard lighting, which would be required from the streets redesign shall be provided as a credit to DPWs decorative IES lighting design.

Decorative Street Lighting Inspection and Engineering – Phase 1	\$609,379
Standard Street Lighting Inspection and Engineering – Phase 1	\$(210,340)
Resulting Total (includes contingency)	\$399,039

Existing Lighting Removal costs will be borne by BED based on the significant relocation of streetscape elements and need to update lighting within project limits.

IX. BUSINESS AND PUBLIC OUTREACH

The project team has carried out extensive outreach efforts over the course of project design. Outreach to date includes:

February – May 2022 (Conceptual Design)

- Community Meetings (February & April 2022)
- Business Community Meetings (February & May 2022)
- City Council and Board of Finance
- Transportation, Energy and Utilities Committee
- Burlington Walk-Bike Council
- REIB Committee

- Burlington Business Association
 - Burlington Aging Council
 - Public Works Commission
 - Church Street Marketplace Commission
 - Burlington Parks, Recreation and Waterfront Commission
 - Neighborhood Planning Assemblies
 - Focus Groups (Immigrants & Refugees, Youth, BIPOC, Business Owners, Mobility Support)
 - Website Survey
- February – June 2023 (Final Design)*
- Public Art Selection Process
 - Meetings with individual business and property owners
- October 2023 – Present*
- Flyering efforts on lower Main Street
 - Church Street Marketplace Commission
 - Burlington Walk- Bike Committee
 - Meetings with individual business and property owners

Since early 2022, the project team has held one-on-one meetings with nearly thirty businesses and properties within the project area. Our effort to connect with every business along the corridor continues. Our team welcomes meetings with business owners and property owners at any time, and we continue communicating with business owners we have built relationships with throughout this process.

As the project moves toward construction, DPW is working with EIV as the project outreach consultant to update the project website and connect with tenants and business owners along lower Church Street, ahead of the start of the ravine sewer work. Larger meetings for the general and business communities will be held in early 2024, prior to the start of work along Main Street. Throughout construction, the project team will maintain communication with the community and project stakeholders through weekly construction updates, email, and phone. Natalie will be available for meetings with stakeholders as needed, as well as by email and phone. The project team is collaborating with the Business and Workforce Development on ways to support businesses through construction such as social media content, signage, and regular meetings. S.D. Ireland will have a full-time safety officer assigned to the project, who will monitor site conditions and access to businesses, and be assigned to addressing complaints or deficiencies in site conditions.

X. PROJECT FINANCIALS

Downtown TIF

Phase 1 of Great Streets Main Street is being defined as Main Street improvements from Pine Street to South Winooski, including Ravine Sewer work. The majority of this project is to be funded by Downtown Tax Increment Financing as approved by the Vermont Economic Progress Council (VEPC) and Burlington voters in March of 2015 (\$10,000,000), and again in March of 2022 (\$25,920,000). Following these approvals, the City then bonded for the design and construction of the project in August of 2022. The resulting bond proceeds totaled \$30,120,000 , and \$4,261,971 in premiums .

City staff has reviewed the change in scope relative to the overall project and procurement as well as with consideration to the DT-TIF Bond and VEPC approval.

- The project procurement solicited bids of contractors that have significant technical ability to complete work across several areas of expertise. During this procurement as well as others like it in scale and scope DPW has found there is a limited number of companies capable of doing the work required for this project within Vermont and surrounding region. The revised project scope with ravine sewer include the most technically challenging components of the project and therefore limit the companies that are qualified to do this type of work. There are no changes in the unit prices. As we reduce the scope of the project, the unit prices are held consistent and quantities in the bid tabulation have been scaled down proportionally. With this understanding, DPW believes the outcome of any new solicitation for the project would result in the same low bidder; and the revised project does not materially change the solicitation. Additionally, this project utilizes unit priced items and pays by the quantity of material used and therefore the quantity of nearly every item is expected to change from the time of the bid to the final reconciliation of the project.
- DPW and CT Staff have reviewed the revised project option with the City's Bond Counsel to ensure that the refined project fits within the original conditions of the DT-TIF bond. Based upon this review, bond counsel advised that the voter authorization specifically allows the funds to be used on the relocation and upgrades to the ravine sewer. It also includes street improvements to all 6 of the originally identified blocks. It does not require the funding be applied to street improvements across all 6 blocks, suggesting that the revised 3-block project is supported by the original authorizations.
- The revised project and proposed use of additional capital funding requires that the City update the TIF project description and subsequent financing plan with VEPC. This revised project classifies as a substantial change and requires the VEPC Board take action. Staff anticipates this substantial change to be reviewed by VEPC in January/February of 2024.
- The original November 2021 VEPC approval included a total project budget of \$30,658,933. Upon procurement of the final bonding City staff submitted a substantial change request to VEPC in July of 2023. Within this request, one of the items was to update the Main Street Project Budget to a total of \$34,381,971. This accounts for use of the full Bond Proceeds and Bond Premiums procured under the voter authorization. This substantial change request remains open until such time that the ongoing State Auditor report on the Downtown TIF fund is completed and can be included for the VEPC consideration of the City's request. We estimate that this report will be completed by the end of 2023 and the City will resume the Substantial Change Request process in early 2024.
 - As such DPW is seeking to bifurcate the execution of the construction contract into an initial contract that will make use of the voter and VEPC Approved Bond Proceeds and a future budget amendment that will incorporate use of the Bond Premiums pending approval by VEPC.

Street Capital Funding

Street Capital tax revenues from FY25 will be used towards items in the project that are not DT-TIF eligible, as well as supporting the reconstruction of other sidewalks and street sections within the project area. This is anticipated to be \$395,706.03, and is outlined in the attached budget. This includes paving that occurs outside of the revised project limits, from South Winooski Avenue to South Willard Street which is an important connection for the project. Pavement condition of this section of Main

Street is one of our lowest Pavement Condition Index (PCI) arterial streets, and will allow bike lanes to be striped. The street capital funding anticipates that after this allocation towards this project and other local match allocations, approximately \$1.3 million will still be available towards annual paving. Capital funding and street capital will still be able to reconstruct approximately 2 miles of sidewalk in FY25.

Water Resources Funding

As appropriate to ensure the resiliency of the water, sewer and storm assets being constructed with the project, the Water Resources Division will contribute up to \$211,000 of FY25 Water Resources Enterprise Funds, to be approved during the annual budget approval, at which time the specific expense accounts will be identified.

City Staff will continue working with the selected contractor and consultants to identify areas where the project can take advantage of any efficiencies with the work to reduce the direct capital being used to support the project while adding back in the finishes and amenities under Add Alternative #2.

XI. MOTIONS

Board of Finance:

1. To approve and recommend that the City Council authorize the Director of Public Works to execute Amendment #8 to the design contract, subject to City Attorney review and approval, with Vanasse Hangen Brustlin, Inc. (VHB) in the amount of \$614,811.00, bringing the total contract value up to \$3,160,488.00, and authorize the use of an additional \$61,481.00 in contingency funds to be available to use toward any necessary future contract amendments needed to accomplish the design work herein contemplated, and further authorize execution of any such necessary amendments upon review and approval by the City Attorney's Office, for a total authorized amount of \$3,221,969.00 for the development of the design of the Great Streets Main Street project.
2. To approve and recommend that the City Council authorize the Director of Public Works to execute Amendment #1 to the resident engineer contract, subject to City Attorney review and approval, with EIV Technical Services in the amount of \$298,974.00, bringing the total contract value up to \$2,098,974.00, and authorize the use of an additional \$209,897.00 in contingency funds to be available to use toward any necessary future contract amendments needed to accomplish the services detailed herein, and further authorize execution of any such necessary amendments upon review and approval by the City Attorney's Office, for a total authorized amount of \$2,308,871.00 for resident engineering and outreach consulting services for the Great Streets Main Street project.
3. To approve and recommend that the City Council authorize the Director of Burlington City Arts to execute contract amendments with the Great Streets Main Street selected Artists from the current total approved amount of \$66,696 to a total authorized Phase I and Phase II project expenditure in the amount of \$474,626, subject to review and approval by the City Attorney's Office, and to further authorize the use of an additional \$in contingency funds to be available to use toward future amendments for any of the artist contracts, and further authorize execution of any such necessary amendments upon review and approval by the City Attorney's Office, for a total authorized amount of \$500,000.00:
 - a. A contract with Lydia Kern in an amount not to exceed \$90,600 for fabrication of artwork;

- b. A contract with WOWHAUS in an amount not to exceed \$99,000 for fabrication of artwork;
 - c. A contract with Pixel Patch Creative, LLC in an amount not to exceed \$145,000 for fabrication of artwork; and
 - d. A contract with Nancy Winship Milliken Studio, LLC in an amount not to exceed \$140,026 for fabrication of artwork.
- 4. To approve and recommend that the City Council authorize the Director of Public Works to execute a Memorandum of Understanding, subject to City Attorney review and approval, with Burlington Electric Department in the amount of \$399,039, for the lighting construction of the Great Streets Main Street project.
- 5. To approve and recommend that the City Council authorize the Director of Public Works to execute the following initial construction contract and future necessary contract amendments with S.D. Ireland Brothers Corporation to complete the reduced project scope as described herein for the Great Streets Main Streets project, for a total approved expenditure not to exceed \$25,962,543.26, subject to City Attorney Office review and approval:
 - a. an initial construction contract in an amount not to exceed \$21,700,572.20; and,
 - b. any such future contract amendments necessary to carry out the reduced project scope, in additional amounts not to exceed \$2,596,254.83 in contingency funds and \$4,261,971.06 in bond premium funds, totaling \$28,558,798.09 in additional reserve funds, provided that use of the bond premium funds shall be subject to the Vermont Economic Progress Council's (VEPC) review and approval.
- 6. To approve and recommend that the City Council authorize the Chief Administrative Officer, or their designee, to affect all necessary budget amendments and transfers of funds to and from the above-referenced funding sources as needed to pay the above-referenced project expenses in FY24 and Overall Project Budgets, as further detailed in Attachments C and D, provided that such budget amendment and transfers of funds as detailed in Attachment D involving bond premium funds shall be subject to VEPC's prior review and approval of the use of such funds.

City Council:

- 2. To authorize the Director of Public Works to execute Amendment #8 to the design contract, subject to City Attorney review and approval, with Vanasse Hangen Brustlin, Inc. (VHB) in the amount of \$614,811.00, bringing the total contract value up to \$3,160,488.00, and authorize the use of an additional \$61,481.00 in contingency funds to be available to use toward any necessary future contract amendments needed to accomplish the design work herein contemplated,, and further authorize execution of any such necessary amendments upon review and approval by the City Attorney's Office, for a total authorized amount of \$3,221,969.00 for the development of the design of the Great Streets Main Street project.
- 3. To authorize the Director of Public Works to execute Amendment #1 to the resident engineer contract, subject to City Attorney review and approval, with EIV Technical Services in the amount of \$298,974.00, bringing the total contract value up to \$2,098,974.00, and authorize the use of an additional \$209,897.00 in contingency funds to be available to use toward any necessary future contract amendments needed to accomplish the services detailed herein,, and further authorize execution of any such necessary amendments upon

review and approval by the City Attorney's Office, for a total authorized amount of \$2,308,871.00 for resident engineering and outreach consulting services for the Great Streets Main Street project.

4. To authorize the Director of Burlington City Arts to execute contract amendments with the Great Streets Main Street selected Artists from the current total approved amount of \$66,696 to a total authorized Phase I and Phase II project expenditure in the amount of \$474,626, subject to review and approval by the City Attorney's Office, and to further authorize the use of an additional \$25,374 in contingency funds to be available to use toward future amendments for any of the artist contracts, and further authorize execution of any such necessary amendments upon review and approval by the City Attorney's Office, for a total authorized amount of \$500,000.00:
 - a. A contract with Lydia Kern in an amount not to exceed \$90,600 for fabrication of artwork;
 - b. A contract with WOWHAUS in an amount not to exceed \$99,000 for fabrication of artwork;
 - c. A contract with Pixel Patch Creative, LLC in an amount not to exceed \$145,000 for fabrication of artwork; and
 - d. A contract with Nancy Winship Milliken Studio, LLC in an amount not to exceed \$140,026 for fabrication of artwork.
5. To authorize the Director of Public Works to execute a Memorandum of Understanding, subject to City Attorney review and approval, with Burlington Electric Department in the amount of \$399,039, for the lighting construction of the Great Streets Main Street project.
6. To authorize the Director of Public Works to execute the following initial construction contract and future necessary contract amendments with S.D. Ireland Brothers Corporation to complete the reduced project scope as described herein for the Great Streets Main Streets project, for a total approved expenditure not to exceed \$25,962,543.26, subject to City Attorney Office review and approval:
 - a. an initial construction contract in an amount not to exceed \$21,700,572.20; and,
 - b. any such future contract amendments necessary to carry out the reduced project scope, in additional amounts not to exceed \$2,596,254.83 in contingency funds and \$4,261,971.06 in bond premium funds, totaling \$28,558,798.09 in additional reserve funds, provided that use of the bond premium funds shall be subject to the Vermont Economic Progress Council's (VEPC) review and approval.
7. To authorize the Chief Administrative Officer, or their designee, to affect all necessary budget amendments and transfers of funds to and from the above-referenced funding sources as needed to pay the above-referenced project expenses in FY24 and Overall Project Budgets, as further detailed in Attachments C and D, provided that such budget amendment and transfers of funds as detailed in Attachment D involving bond premium funds shall be subject to VEPC's prior review and approval of the use of such funds.

XII. ATTACHMENTS

- A. Bid Analysis
- B. Project Budget
- C. DRAFT Budget Amendment
- D. DRAFT Budget Amendment - Premiums



November 6, 2023

Ref: 58691

Ms. Laura Wheelock
Senior Public Works Engineer
645 Pine Street
Burlington, VT 05401

Re: Burlington Great Streets – Main Street Bid Analysis

Ms. Wheelock,

VHB is pleased to present this bid analysis for the bids received for the above-referenced project. The City advertised bids on July 26, 2023 and opened bids on September 19, 2023 in accordance with project contract requirements, and City procurement policies. The City received two bids, and a bid tabulation of the low base bid is included. A summary of the base bids is provided below.

1. Competitive Analysis:

Engineer's Estimate: \$ 24,702,128.43.

Low Bid: \$ 37,364,229.00 (SD Ireland)

Difference: \$ 12,662,100.57

Number of Bidders: 2

Range of Bids: \$ 37,364,229.00 - \$46,714,545.00

The lowest bid price was approximately 51% higher than the Engineer's estimate price.

2. Bid Submittal Evaluation:

The SD Ireland submittal was determined to be the lowest responsive, responsible bid. The bid was appropriately signed, VHB found no errors and/or omissions in their bid forms, and SD Ireland provided all the required enclosures with their bid proposal.

3. Major Cost Deviations Analysis for Reasonableness and Unbalancing:

Given the low number of bidders and the large discrepancy between the apparent low bid and the engineer's estimate, FHWA guidance recommends conducting a more detailed analysis of the low bid. Items with bid unit price amounts that differed from the Engineer's estimate by greater than or equal to 25% and whose amount is greater than or equal to 1% of the total base bid should be analyzed. Of the 227 project bid items, 111 items had bid unit prices in excess of 25% above the Engineer's estimate bid unit price, and one (1) item had a bid unit price 25% below the Engineer's estimate bid unit price. Thirteen (13) items had amount differences higher than the



acceptable deviation, calculated as approximately \$247,000. Below is a summary of the items further evaluated to determine if any unbalancing exists.

Item Number: 210.10
 Item Name: COARSE-MILLING, BITUMINOUS PAVEMENT
 Estimated Quantity: 5,350 SY

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$ 5.89	\$31,511.50	\$18.00	\$96,300.00	+\$64,788.50

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price for this item. The estimated unit price was based on the price generated by the iPD Software. The quantity has been verified. The high unit price is likely attributed to the current bidding climate and high fuel prices. This contractor's bid unit price was the lowest of the two prospective bidders, but higher than what SD Ireland proposed for the Winooski Main Street reconstruction project (\$15/SY for 1,450 SY). With the expected increase in coarse-milling area resulting from the recent project scope changes, the City should consider re-negotiating this bid price due to the potential for significant cost overruns.

Item Number: 203.15
 Item Name: COMMON EXCAVATION
 Estimated Quantity: 22,500 CY

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$ 15.00	\$337,500.00	\$46.00	\$1,035,000.00	+\$697,500.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price for this item. The estimated unit price was based on the price generated by the iPD Software. The quantity has been verified. The high unit price is likely attributed to the complexity of the work over multiple construction seasons while maintaining traffic operations. This contractor's bid unit price was the lowest of the two prospective bidders. Given the complexity of the work along the project corridor, VHB recommends accepting this bid unit price.



Item Number: 203.30
 Item Name: EARTH BORROW
 Estimated Quantity: 10 CY

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$ 20.89	\$208.90	\$60.00	\$600.00	+\$391.10

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price for this item. The estimated unit price was based on the price generated by the iPD Software. The quantity was an estimated placeholder in case the item is needed on the project. The high unit price is likely attributed to the complexity of the work over multiple construction seasons. If over-excavation is required due to the complexities of the project and the excavated material is not deemed suitable for reuse, there is potential for overrun of this item. An overrun is less likely if the resident engineer is involved and aware, therefore VHB recommends accepting this base bid unit price.

Item Number: 406.35
 Item Name: SUPERPAVE BITUMINOUS CONCRETE PAVEMENT
 Estimated Quantity: 11,560 TONS

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$ 100.00	\$596,000.00	\$185.00	\$1,102,000.00	+\$506,600.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price for this item. The estimated unit price was based on the price generated by the iPD Software. The quantity has been verified. The high unit price is likely attributed to the current bidding climate and high fuel prices. This contractor's bid unit price was the highest of the two prospective bidders by 20%, and approximately 53% higher than what SD Ireland proposed for the Winooski Main Street reconstruction project (\$121.00 / ton). Given the large quantity and price discrepancies, VHB recommends re-negotiating this base bid unit price.



Item Number: 618.10
 Item Name: PORTLAND CEMENT CONCRETE SIDEWALK, 5 INCH
 Estimated Quantity: 13,050 SY

☒ Estimated quantity has been verified. ☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$ 78.66	\$1,026,513.00	\$140.00	\$1,827,000.00	+\$800,487.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price, and the lowest of the two prospective bidders. The high unit price is likely attributed to the complexity of the work along building frontages while maintaining pedestrian traffic. Given the recent project scope changes, there is an expected increase in the use of Portland cement concrete sidewalk for the bike lanes in addition to the pedestrian walking space. The City should consider renegotiating this base bid unit price.

Item Number: 635.11
 Item Name: MOBILIZATION / DEMOBILIZATION
 Estimated Quantity: 1 LS

☒ Estimated quantity has been verified. ☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$ 2,630,000.00	\$ 2,630,000.00	\$6,000,000.00	\$6,000,000.00	+\$3,370,000.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price for this item. This bid unit price represents approximately 21% the cost of all other bid items. The high unit price is likely attributed to multiple construction seasons and the complexity of the work. However, given the typical range for mobilization/demobilization costs is somewhere between 6% and 10% of all other bid items, VHB would recommend re-negotiating this bid unit price.



Item Number: 641.11
 Item Name: TRAFFIC CONTROL, ALL-INCLUSIVE
 Estimated Quantity: 1 LS

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
1,000,000.00	\$1,000,000.00	\$2,500,000.00	\$2,500,000.00	\$1,500,000.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price for this item. The high unit price is likely attributed to the nature of the work while needing to maintain vehicular and pedestrian traffic accommodations active during construction. Given the complexity of the work along the project corridor, VHB recommends accepting this bid unit price.

Item Number: 630.15
 Item Name: FLAGGERS
 Estimated Quantity: 15,000 HR

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$36.77	\$551,550.00	\$70.00	\$1,050,000.00	+\$498,450.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price. This work would likely be outsourced to a subcontractor during construction. The high unit price is likely attributed to anticipated inflation and the likelihood that some overtime will be required to satisfy the traffic control needs. This quantity represents four-person crew could work full-time for over 90 weeks. Given the complexity of the work, there is an opportunity for overrun for the entirety of the project. The City should consider renegotiating this bid unit price.



Item Number: 641.15
 Item Name: PORTABLE CHANGEABLE MESSAGE SIGN
 Estimated Quantity: 1 EA

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$5,000.00	\$5,000.00	\$30,000.00	\$30,000.00	+\$30,000.00

Explanation: The low bid unit price is significantly higher than anticipated and much higher than what SD Ireland proposed for the Winooski Main Street reconstruction project (\$18,000.00 / EA). Given the City could likely purchase their own PCMS for less than this cost, VHB would recommend removing this item from the bid package and re-negotiate the traffic control needs for the project corridor.

Item Number: 646.424
 Item Name: DURABLE 6 INCH WHITE LINE, POLYUREA
 Estimated Quantity: 1,150 LF

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$2.89	\$3,323.50	\$6.00	\$6,900.00	+\$3,576.50

Explanation: The low bid unit price is significantly higher than anticipated. Given the recent project scope changes, there is an expected increase in 6 inch white lines for new bike lanes between Battery and Pine and S Winooski and S Union. Given the minor impact to total project cost, VHB recommends accepting this bid price.



Item Number: 900.608
 Item Name: SPECIAL PROVISION (SOIL CELLS -31" DEPTH)
 Estimated Quantity: 1281 CY

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$80.00	\$102,480.00	\$435.00	\$557,235.00	+\$454,755.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price. The high unit price is likely attributed to the complexity of the work while maintaining pedestrian traffic. The quantity has been verified. Given the cost, the City may want to consider using an alternative treatment, or considering using a smaller quantity of cells at each tree.

Item Number: 900.620
 Item Name: SPECIAL PROVISION (TREE GRATE)
 Estimated Quantity: 22 EA

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$775.00	\$17,050.00	\$6,500.00	\$143,000.00	+\$125,950.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price. The quantity has been verified and the bid price was based on outreach for prospective vendors. The City may want consider either re-negotiating this bid item or seek an alternative treatment for the tree pits.



Item Number: 900.620
 Item Name: SPECIAL PROVISION (BANNER POLE)
 Estimated Quantity: 4 EA

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$2,000.00	\$8,000.00	\$15,300.00	\$61,200.00	+\$53,200.00

Explanation: The low bid unit price for each banner pole is significantly higher than the engineer's estimated unit price. The City may want to consider re-negotiating these bid unit prices, seek an alternative, or work to install them by other means at a later date.

Item Number: 900.620
 Item Name: SPECIAL PROVISION (PRECAST DETENTION VAULT)(PRACTICE #)
 Estimated Quantity: 8 EA

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$30,000.00	\$240,000.00	VARIES	\$1,274,150.00	+\$1,034,150.00

Explanation: The low bid unit price for each vault is significantly higher than the engineer's estimated unit price. This cost represents a significant construction cost overrun. The City may want to consider re-negotiating these bid unit prices, reduce the number of vaults, or seek an alternative stormwater collection facility.



Item Number: 900.620
 Item Name: SPECIAL PROVISION (ELECTRIC VEHICLE CHARGER, LEVEL 3)
 Estimated Quantity: 1 EA

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$10,000.00	\$10,000.00	\$70,000.00	\$70,000.00	+\$60,000.00

Explanation: The low bid unit price for this item is significantly higher than the engineer's estimated unit price. The City may want to consider removing the item from the contract and work directly with Burlington Electric to install one at a future date.

Item Number: 900.640
 Item Name: SPECIAL PROVISION (PAVER CROSSWALKS)
 Estimated Quantity: 985 LF

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$200.00	\$197,000.00	\$625.00	\$615,625.00	+\$418,625.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price for this item. The high unit price is likely attributed to the complexity of work in an active traffic environment. The City may want to consider an alternative treatment for the crosswalks or re-negotiate the unit price with the contractor.



Item Number: 900.645
 Item Name: SPECIAL PROVISION (MAINTENANCE OF WATER FLOWS)
 Estimated Quantity: 1 LS

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$250,000.00	\$250,000.00	\$1,400,000.00	\$1,400,000.00	\$1,150,000.00

Explanation: There is a large discrepancy between the engineer's estimated unit price and the contractor's bid price. A discussion with the contractor is warranted to discuss the scope of work and to re-negotiate this bid item.

Item Number: 900.645
 Item Name: SPECIAL PROVISION (MAINTENANCE OF WASTEWATER FLOWS)
 Estimated Quantity: 1 LS

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
\$100,000.00	\$100,000.00	\$725,000.00	\$725,000.00	+\$625,000.00

Explanation: There is a large discrepancy between the engineer's estimated unit price and the contractor's bid price. A discussion with the contractor is warranted to discuss the scope of work and to re-negotiate this bid item.



Item Number: 900.670
 Item Name: SPECIAL PROVISION (COLORED PAVEMENT MARKINGS)
 Estimated Quantity: VARIES

☒ Estimated quantity has been verified.

☐ Estimated quantity has been found to be in error. (see explanation)

Color	Estimated Unit Price	Extended Estimate	Low Bid Unit Price	Extended Low Bid	Low Bid Difference
Green	\$10.00	\$22,000.00	\$18.00	\$39,600.00	+\$17,600.00
Red	\$10.00	\$8,150.00	\$20.00	\$16,300.00	+\$8,150.00
Khaki	\$10.00	\$13,400.00	\$20.00	\$26,800.00	+\$13,400.00

Explanation: The low bid unit price is significantly higher than the engineer's estimated unit price for this item. Given the recent project scope changes, there is an expected increase in green pavement markings for new bike lanes between Battery and Pine and S Winooski and S Union. The City may want to consider painting some of the new markings with in-house staff.

Unit Price Assessment:

The following is the list of additional items whose bid unit price was more than 25% above or below the Engineer's estimate bid unit price:

ITEM NO.	ITEM DESCRIPTION
201.10	CLEARING AND GRUBBING, INCLUDING INDIVIDUAL TREES AND STUMPS
201.15	REMOVING MEDIUM TREES
201.16	REMOVING LARGE TREES
201.20	REMOVING MEDIUM STUMPS
203.16	SOLID ROCK EXCAVATION
203.30	EARTH BORROW
301.26	SUBBASE OF CRUSHED GRAVEL, FINE GRADED
301.35	SUBBASE OF DENSE GRADED CRUSHED STONE
406.35	SUPERPAVE BITUMINOUS CONCRETE PAVEMENT (TEMPORARY TRENCH PATCH)
406.35	SUPERPAVE BITUMINOUS CONCRETE PAVEMENT (PERMANENT TRENCH PATCH)
406.35	SUPERPAVE BITUMINOUS CONCRETE PAVEMENT (OVERLAY)
406.38	HAND-PLACED BITUMINOUS CONCRETE MATERIAL, DRIVES



507.11	REINFORCING STEEL
541.25	CONCRETE, CLASS B (STAIRS)
541.25	CONCRETE, CLASS B (LIGHT POLE FOUNDATIONS)
604.415	REHAB. DROP INLETS, CATCH BASINS, OR MANHOLES, CLASS II
605.10	UNDERDRAIN PIPE, 6 INCHES
605.20	UNDERDRAIN CARRIER PIPE, 6 INCHES
605.95	UNDERDRAIN FLUSHING BASIN
609.10	DUST CONTROL WITH WATER
616.21	VERTICAL GRANITE CURB
616.21	VERTICAL GRANITE CURB (GRANITE RETAINING WALL)
618.11	PORTLAND CEMENT CONCRETE SIDEWALK, 8 INCH
618.30	DETECTABLE WARNING SURFACE
622.10	INSULATION BOARD
630.10	UNIFORMED TRAFFIC OFFICERS
646.404	DURABLE 4 INCH WHITE LINE, POLYUREA
646.414	DURABLE 4 INCH YELLOW LINE, POLYUREA
646.464	DURABLE 12 INCH WHITE LINE, POLYUREA
646.484	DURABLE 24 INCH STOP BAR, POLYUREA
646.494	DURABLE LETTER OR SYMBOL, POLYUREA
646.504	DURABLE CROSSWALK MARKING, POLYUREA
651.20	AGRICULTURAL LIMESTONE
651.35	TOPSOIL
653.01	EPSC PLAN
653.02	MONITORING EPSC PLAN
653.41	INLET PROTECTION DEVICE, TYPE II
656.65	LANDSCAPE WATERING
675.20	TRAFFIC SIGN, TYPE A
675.341	SQUARE TUBE SIGN POST AND ANCHOR
675.60	RESETTING SIGNS
678.45.01	REMOVAL OF EXISTING TRAFFIC CONTROL SIGNAL SYSTEM
900.608	SPECIAL PROVISION (HORTICULTURAL SOIL)
900.608	SPECIAL PROVISION (COMPOST MULCH)
900.608	SPECIAL PROVISION (PEA STONE)
900.608	SPECIAL PROVISION (SOIL CELLS - 16" DEPTH)
900.620	SPECIAL PROVISION (BANNER POLES)
900.620	SPECIAL PROVISION (REMOVABLE BOLLARD)
900.620	SPECIAL PROVISION (POWER BOLLARD)
900.620	SPECIAL PROVISION ("BIKE" BIKE RACK)
900.620	SPECIAL PROVISION (BULLETIN BOARD)
900.620	SPECIAL PROVISION (BUS SHLETER)
900.620	SPECIAL PROVISION (REMOVE AND RESET WAYFINDING SIGN)
900.620	SPECIAL PROVISION (REMOVE AND RESET COMMERCIAL SIGN)
900.620	SPECIAL PROVISION (ELECTRIC VEHICLE CHARGER ,LEVEL 2)



900.620	SPECIAL PROVISION (REMOVE AND RESET USPS MAILBOX)
900.620	SPECIAL PROVISION (16-INCH BUTTERFLY VALVE WITH BOX)
900.620	SPECIAL PROVISION (INSERTION VALVE, 6")
900.620	SPECIAL PROVISION (INVERSTION VALVE, 8")
900.620	SPECIAL PROVISION (INSERTION VALVE, 10")
900.620	SPECIAL PROVISION (INSERTION VALVE, 16")
900.620	SPECIAL PROVISION (HYDRANT)
900.620	SPECIAL PROVISION (3/4-INCH CORPORATION STOP AND SERVICE SADDLE)
900.620	SPECIAL PROVISION (1-INCH CORPORATION STOP AND SERVICE SADDLE)
900.620	SPECIAL PROVISION (3/4" CURB STOP WITH BOX)
900.620	SPECIAL PROVISION (1" CURB STOP WITH BOX)
900.620	SPECIAL PROVISION (1-1/2" CURB STOP WITH BOX)
900.620	SPECIAL PROVISION (2" CURB STOP WITH BOX)
900.620	SPECIAL PROVISION (SEWER SERVICE WYE OR TEE)
900.620	SPECIAL PROVISION (SEWER SERVICE TEE LEG)
900.620	SPECIAL PROVISION (PRCDI, ALL-INCLUSIVE, 4' DIA.)
900.620	SPECIAL PROVISION (PRCMH, ALL-INCLUSIVE, 6' DIA.)
900.620	SPECIAL PROVISION (PRCMH, ALL-INCLUSIVE, 8' DIA.)
900.640	SPECIAL PROVISION (GRANITE STAIRS)
900.640	SPECIAL PROVISION (PLANTER RAIL)
900.640	SPECIAL PROVISION (SOTRM DRAIN, ALL-INCLUSIVE)(12" CPEP)(SL)
900.640	SPECIAL PROVISION (SOTRM DRAIN, ALL-INCLUSIVE)(15" CPEP)(SL)
900.640	SPECIAL PROVISION (HYDRANT EXTENSION)
900.640	SPECIAL PROVISION (3/4-INCH HDPE SERVICE)
900.640	SPECIAL PROVISION (1-INCH HDPE SERVICE)
900.640	SPECIAL PROVISION (1-1/2-INCH HDPE SERVICE)
900.640	SPECIAL PROVISION (2-INCH HDPE SERVICE)
900.640	SPECIAL PROVISION (48-INCH SUPERBLOCK SEWER PIPE)
900.640	SPECIAL PROVISION (8-FOOT DIAMETER SANITARY SEWER MANHOLE)
900.640	SPECIAL PROVISION (BULLNOSE CURB)
900.640	SPECIAL PROVISION (GRANITE PLANTER CURB)
900.640	SPECIAL PROVISION (GRANITE PLANTER CURB - FLUSH)
900.645	SPECIAL PROVISION (CONSTRUCTION VIBRATION AND CRACK MONITORING)
900.645	SPECIAL PROVISION (TEMPORARY LIGHTING)
900.645	SPECIAL PROVISION (ABANDON RAVINE SEWER)
900.645	SPECIAL PROVISION (SOIL MANAGEMENT PLAN-PROJECT OPERATIONS PLAN)
900.645	SPECIAL PROVISION (ABANDON EXISTING SEWER MAIN)
900.645	SPECIAL PROVISION (ABANDON EXISTING STORM DRAIN)
900.670	SPECIAL PROVISION (GRANITE DETECTABLE WARNING PAVER)
900.670	SPECIAL PROVISION (REMOVE AND RESET BRICK PAVERS)
900.670	SPECIAL PROVISION (COLORED PAVEMENT MARKINGS)(GREEN)
900.670	SPECIAL PROVISION (COLORED PAVEMENT MARKINGS)(RED)
900.670	SPECIAL PROVISION (COLORED PAVEMENT MARKINGS)(KHAKI)



While the Low Bid Difference of these items does not exceed the dollar value warranting individual analysis of the items, they have been reviewed and quantities have been checked.

4. Recommendations

VHB found evidence of significant unbalancing in the apparent low bidder's submittal. The complexity of the work over multiple construction seasons, along with labor shortages, availability of materials and rising fuel prices are the likely reasons for the higher than anticipated bid unit prices. With the uncertainty of the bidding climate in the future, there is no guarantee that a re-advertisement of the project in the Winter would result in more competition and more favorable bid unit prices. Therefore, it would be VHB's recommendation to value-engineer the current scope of work and attempt to re-negotiate some of the bid unit prices suggested above.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Vanasse Hangen Brustlin, Inc.

A handwritten signature in black ink, appearing to read "Evan P. Detrick".

Evan Detrick, PE

Project Manager
edetrack@vhab.com

NEW WORLD Project Name: 853 Main St

Project Manager: Olivia Darisse
 Project Supervisor: Laura Wheelock
 Last Updated: 11/14/2023

G/L NUMBER AND NAME	Detailed Project Name	NOTES	Total
REVENUE:			
853-19-700.4990_236	853 MAIN ST, DT TIF - Capital	DT TIF VA BOND - Construction	\$23,391,722.00
853-19-700.4990_236	853 MAIN ST, DT TIF - Capital Premiums	DT TIF VA PREMIUMS	\$4,261,971.06
853-19-700.4990_236	853 MAIN ST, DT TIF - Public Art	Public Art	\$500,000.00
853-19-700.4990_236	853 MAIN ST, DT TIF - Ravine Sewer	Ravine Sewer	\$6,228,278.00
		Water/Sewer/Storm	\$211,000.00
843-19-700.4875_130	842 Street Reconstruction - Paving	Street Capital	\$395,706.03
		Subtotal	\$34,988,677.09
EXPENSES:			
853-19-700.9500_236	853 MAIN ST, DT TIF - Capital	Design consultant - (Main St. & Ravine)	\$2,545,677.00
		Redesign	\$128,274.00
		Water/Sewer Special Inspection	\$182,400.00
		QEP Inspection	\$304,137.00
853-19-700.9500_236	853 MAIN ST, DT TIF - Public Art	Public Art (Design& Construction)	\$500,000.00
		Nancy Winship Miliken, WOWHAUS, Pixel Patch Creative, Lydia Kern Studio	
853-19-700.9500_236	853 MAIN ST, DT TIF - Capital	Street Lighting (Decorative)	\$399,039.00
853-19-700.9500_236	853 MAIN ST, DT TIF - Capital	RE and Outreach Consultant	\$1,800,000.00
853-19-700.9500_236	853 MAIN ST, DT TIF - Capital	RE and Outreach Consultant	\$298,974.00
		EIV Fee with Contingency	
853-19-700.9500_236	853 MAIN ST, DT TIF - Capital	Construction Road/Utilities	\$14,865,588.17
853-19-700.9500_236	853 MAIN ST, DT TIF - Capital Premiums	Construction Road/Utilities	\$4,261,971.06
853-19-700.9500_236	853 MAIN ST, DT TIF - Ravine Sewer	Ravine Sewer	\$6,228,278.00
		Water/Sewer	\$211,000.00
843-19-700.8040_840	842 Street Reconstruction - Paving	Paving	\$271,136.03
843-19-700.8040_840	842 Street Reconstruction - Paving	Add Alternative #1	\$124,570.00
		Contingency	\$2,867,632.83
		10% (Design/BED/RE/Const)	
		Subtotal	\$34,988,677.09
		NET	\$0.00

CITY OF BURLINGTON, VT
PROJECT BUDGET AMENDMENT REQUEST

Department: DPW Requested by: Laura Wheelock Date: DRAFT

Briefly explain the reason for the amendment:

Amend budget per City Council Approval 11/20/23. Amendment for the TIF Bond Premiums will be sought separately.

Dept. Head Approval (under 10k)

Chief Administrative Officer Date (10k to 24,999)

Mayor Date (25K - 50K)

BUDGET AMENDMENT DETAILS

Org Set	GL Account	Account Name	Project/Sub/Detail Name	Increase/ (Decrease)
853-19-700	9500_236	Main Street, Public Works, Capital Projects.Capital Outlay - Capital Outlay Downtown TIF	853 Main Street - Ravine Sewer-	6,228,278
853-19-700	4925_100	Main Street, Public Works, Capital Projects.Proceeds - Bank/Bond Note	853 Main Street - Ravine Sewer-	6,228,278
853-19-700	9500_236	Main Street, Public Works, Capital Projects.Capital Outlay - Capital Outlay Downtown TIF	853 Main Street - Public Art -	66,696
853-19-700	4925_100	Main Street, Public Works, Capital Projects.Proceeds - Bank/Bond Note	853 Main Street - Public Art -	66,696
853-19-700	9500_236	Main Street, Public Works, Capital Projects.Capital Outlay - Capital Outlay Downtown TIF	853 Main Street - DT TIF Capital	15,616,722

CITY OF BURLINGTON, VT
PROJECT BUDGET AMENDMENT REQUEST

Department: DPW Requested by: Laura Wheelock Date: DRAFT

Briefly explain the reason for the amendment:

Amend budget per City Council Approval 11/20/23 to allow the use of premiums as an expense in the project budget contingent upon approval of the City's July 2023 Substantial Change Request to VEPC.

_____ (under 10k)
Dept. Head Approval

_____ (10k to 24,999)
Chief Administrative Officer Date

_____ (25K - 50K)
Mayor Date

BUDGET AMENDMENT DETAILS

Org Set	GL Account	Account Name	Project/Sub/Detail Name	Increase/ (Decrease)
853-19-700	9500_236	Main Street, Public Works, Capital Projects.Capital Outlay - Capital Outlay Downtown TIF	853 Main Street - DT TIF Capital - Premiums-	4,261,971

Board of Finance and City Council Submission Checklist

Department: Public Works Submitter: Laura Wheelock and Olivia Darisse

Title/Subject: Main Street Construction Contract Award and Budget Amendment

	Approval:	Meeting Date:
☐	Board of Finance	Click or tap to enter a date.
☐	City Council	Click or tap to enter a date.
☒	Concurrent	11/20/2023

This form must be completed by the person submitting the materials, and sent with the final submission. Please do not indicate that a signoff was received until it has actually been obtained.

Signoffs Received

Signoff Needed	Received	Date Received	Note
Department Head	Yes	11/16/2023	Chapin Spencer
Mayor's Office informed and approved memo	Yes	11/16/2023	Jordan Reddell
Board/Commission, if required	N/A	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved contract and/or legal documents, -Identify attorney in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved memo and motion(s) or resolution(s) -Identify attorney in note	Yes	11/16/2023	Hayley McClenahan
CAO has reviewed budget, financing, and memo	Yes	11/16/2023	Katherine Schad
Human Resources, if personnel action -Identify HR Manager in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
CIO, if an IT-related investment/purchase	N/A	Click or tap to enter a date.	Click or tap here to enter text.

Materials Included

	Included?	Note
Final Memo Attached?	Yes	Click or tap here to enter text.
Contract Attached, if applicable?	No	Contract subject to review by City Attorney
Additional Materials, if necessary	Choose an item.	Budget Amendment documents
Draft Resolution or Motion?	Yes	Motions - Memo
If for submission to Council, are sponsors identified?	Yes	Board of Finance



Date: November 20, 2023
To: Board of Finance
From: Katherine Schad, Chief Administrative Officer
Memo: District Energy Franchise Fee Agreement

Executive Summary

The District Energy Project has agreed to pay ongoing franchise fees to the City of Burlington to defray the municipal costs attributable to District Energy's construction in and occupation of the City's right of way.

Background and Notes

Street franchise fees are governed by [ordinance](#), which states:

"Services such as natural gas, electric, local exchange telephone, water and wastewater are legal and/or natural monopolies provided by investor or publicly owned public service companies. Their service rates are established and/or regulated on a cost-of-service basis rather than a market-will-bear basis. All such companies (including, but not limited to, the Burlington Electric Department and the Water and Wastewater Divisions of the Public Works Department) shall pay a franchise fee of two and one-half (2.5) percent gross revenues commencing July 1, 1990."

Franchise fee agreements have been in place since 1991 with affected utilities and the proposed agreement is in line with ordinance.

Finances

The Burlington Electric Department anticipates average ballpark levelized over 20 years will be approximately \$5.3M annually but it will be uneven in practice. Given the 2.5% applied this would be about \$132,500 per year in additional revenue to the general fund.

Motion

Board of Finance - to approve and recommend that the City Council approve and authorize the Mayor to sign the Franchise Fee Agreement regarding payment of Franchise Fees with the District Energy Project, subject to review and approval by the City Attorney's office.



Date: November 20, 2023
To: Board of Finance
From: Katherine Schad, Chief Administrative Officer
Memo: District Energy Franchise Fee Agreement

Executive Summary

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Franchise fee agreements have been in place since 1991 with affected utilities and the proposed agreement is in line with ordinance.

Motion

Board of Finance - to approve and recommend that the City Council approve and authorize the Mayor to sign the Franchise Fee Agreement regarding payment of Franchise Fees with the District Energy Project, subject to review and approval by the City Attorney's office.

STEAM SYSTEM AGREEMENT
WITH BURLINGTON DISTRICT ENERGY

Burlington District Energy System
17G West Tatro Drive, Jeffersonville, Vermont 05464

This 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 (hereinafter “City”) and Burlington District Energy, Inc. DBA Burlington District Energy System, a Vermont non-profit corporation with its principal offices at 17G West Tatro Drive, Jeffersonville, Vermont 05464 (hereinafter “BDES”). The City and BDES may be referred to hereinafter individually as a “Party” and jointly as the “Parties”.

WHEREAS, BDES seeks to construct, maintain, repair, replace and use an underground pipe/line/conduit consisting of a steel steam pipe, a condensate drainpipe, and a conduit pipe for fiber and electrical communications (“Conduit”) upon and across City rights of way for the benefit of an energy-efficient steam system (“Steam System”) to initially serve University of Vermont (“UVM”) Medical Center located on the south side of Colchester Ave; and

WHEREAS, the occupation of the City’s right of ways requires approval of the Burlington City Council; and

WHEREAS, authority to enter into this Agreement exists in the City Charter and in Burlington City Ordinance 27-Article IV “Street Franchise Fees”, and the required approvals, clearance, and coordination have been accomplished from and within each Party.

W I T N E S S E T H:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and BDES enter into the following Agreement:

1. 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 30 years from the date of execution.
- C. Termination.** This Agreement may be terminated as set forth in this **Section 1.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 and fails to cure said breach within [] days. The City shall provide 7 days written notice in advance of the termination date.

- iv. **Renewal** Agreement shall be renewable for another 30-year term after term length has expired, at the discretion of the City and pursuant to all necessary City approvals.

2. **CONDUIT PLACEMENT**

- A. BDES may construct, maintain, repair, replace and use an underground Conduit for the benefit of an energy-efficient Steam System to initially serve UVM Medical Center located on the south side of Colchester Avenue, and future prospective customers in the area, subject to the terms and conditions set forth in this Agreement.
- B. Such initial occupation of the right of way is to be at a depth as depicted and shown on the Plan entitled “Burlington District Steam System Plan and Profile, prepared by Evergreen Energy, dated November 22, 2022 (“Plan”) and adopted by reference into this Agreement and placed on file in the Department of Public Works (“DPW”).
- C. The initial conduit will run upon and across the City’s right of way which begins at the McNeil Generating Station at 111 Intervale Road and proceeds south along Intervale Road, across the New England Central Railroad tracks and Riverside Avenue, down North Prospect Street to the intersection of North Street. At North Street, the Conduit continues eastward to Mansfield Avenue and turns south onto Colchester Avenue where it then proceeds east until it terminates at the UVM Medical Center, as depicted and shown on the Plan.. Such occupation of the right of way shall be approximately five (5) feet in width. BDES may use and maintain the occupied portion of the street, sidewalk and greenbelt existing in the City’s right-of-way. The initial Conduit must be maintained and placed exactly as described in the Plan, with future potential Conduits subject to DPW approval.
- D. Any and all construction, maintenance, repair, or replacement hereunder shall be subject to and performed pursuant to and in compliance with all applicable governmental requirements, approvals and permits required for such work. Any applicable fees required for such work shall be in addition to the fee set forth in Section 7 of this Agreement. This agreement does not in any way obligate any department or office of the City to approve any permit required for the work contemplated in this Agreement. The City shall act in good faith and utilize reasonable engineering standards in making its permitting decisions.
- E. The right to construct, maintain, repair, replace and use the Conduit is offered and accepted “AS IS, WHERE AS” and “WITH ALL FAULTS”, and neither the City nor its agents, employees or other representatives make any guarantee,

representation or warranty, express or implied (and the City shall not have any liability whatsoever) as to the value, uses, habitability, condition, design, operation, financial condition or prospects, or fitness for a particular purpose or use of the right of way or the City's land adjacent thereto, or any part thereof, or any other guarantee, representation or warranty whatsoever, express or implied, with respect to the right of way or any part thereof or the City's land adjacent thereto, or information supplied to BDES with respect thereto. Further, the City shall have no liability for any latent, hidden, or patent defect as to the right of way or the City's land adjacent thereto.

- F. City shall be invited to attend any and all construction meetings occurring in reference to the placement of the Conduit and any related utility relocations, resurfacing of streetscapes, and testing of material.

3. RELOCATION

- A. The Parties acknowledge and agree that the use, repair, improvement and maintenance of the City's right of way, including sidewalks, street, and combined sewer/storm water and storm water system have the highest priority of any and all uses of, within, on, or about the right of way. This Agreement conveys no property interest or vested right in the public streets or rights of way and the Parties acknowledge and agree that the City reserves the right to use the public streets for its own governmental purposes and the rights given by this Agreement cannot interfere with the use, repair, improvement and maintenance of the right of way or the public conveniences in traveling on or using such right of way. This Agreement does not diminish or negate any of BDES's existing rights as a property owner under common law or statute, or any of the City's existing rights as a municipality under common law or statute.
- B. The Parties acknowledge and agree that the City Engineer or his/her designee may at his or her sole discretion at a future date determine in good faith that it is necessary to relocate utilities, including BDES's Conduit, within and/or upon the City right of way for the proper maintenance and improvement of this right of way, including the maintenance and improvement of the street, sidewalks, and storm water and/or combined sewer/storm water system located upon and within the right of way.
- C. In the event of such a determination and upon reasonable written notice of no less than six (6) calendar months, BDES shall relocate the Conduit at its sole expense and pursuant to and in compliance with all applicable governmental requirements,

approvals and permits required for such work, which permits and approvals shall not be unreasonably denied or delayed.

- D. If BDES has reason to believe that the decision of the City Engineer is made in bad faith, BDES has the right, as a property owner, to seek legal and/or equitable relief, including temporary and permanent injunctive relief.

4. MAINTENANCE & PERFORMANCE OF WORK

- A. Except during construction, maintenance, replacement, repair or relocation, BDES shall maintain the Conduit and the land needed to support it in a manner that does not impair the public rights of way, including the protection of utilities, pedestrians and vehicles traveling upon the public right-of-ways within and adjacent to the property occupied by the Conduit.
- B. BDES may enter onto the City's right of way to bore under, excavate, support, fill and otherwise take such actions as may be necessary or appropriate as required from time to time to ensure the structural integrity of the Steam System pursuant to and in compliance with all applicable governmental requirements, approvals and permits required for such work.
- C. BDES shall maintain the Conduit and the land needed to support it in a manner that protects the right of way and all utilities, existing or future, located within the right of way or adjacent to the rights-of-ways. BDES agrees that any and all expenses assumed by a utility to repair damages caused to the utility by the construction, use, maintenance, repair or relocation of the Conduit allowed by this Agreement shall be reimbursed by BDES. Utilities currently located in the right of way are depicted in the Plan and are incorporated herein by reference. Prior to the commencement of any future work by BDES on the right of way pursuant to this Agreement, a then current drawing(s) of utilities located in and adjacent to the relevant portions of the right of way shall be prepared by BDES and submitted to the City.
- D. BDES 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. BDES shall erect proper signage to redirect pedestrians safely from the Premises. BDES 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. BDES shall take all additional reasonable activities requested by DPW to control such pedestrian traffic. BDES 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. BDES 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 BDES to implement those changes.

- E.** In the exercise of its rights under this Agreement, BDES will perform all work in the right of way in a good and workmanlike manner, in conformance to the requirements of any and all permits and permit requirements required for such activity by the City. BDES shall perform all work so as to cause no unnecessary damage or disturbance to the City's lands or the utilities located therein or the public's rights in the right of way. In each and every instance, BDES shall restore each portion of the right of way disturbed by BDES's entry to the same and as good a state and condition as they were immediately prior to BDES's entry unless otherwise required by a permit or permit condition issued by the City concerning said work.
- F.** BDES agrees to respond and repair unforeseen or undo damage or failure of the steam system. BDES agrees to respond to and complete all repairs to the steam system in a timely manner, and agrees to manage and negate any hazardous conditions that may occur from undo damage to the steam system. BDES shall take all reasonable precautions to protect the public from potential hazards resulting and emanating from the Conduit due to activities related to the uses for which this Conduit is permitted.
- G.** All pipe insulation consisting of Gilsulate 500xr insulation products shall be contained to trench limits using non-woven geotextile fabric to fully encapsulate the Gilsulate insulation material.
- H.** BDES shall be responsible for the maintenance and associated repair of the street, sidewalk, and greenbelt on the Conduit location until final pavement, concrete, and topsoil resurfacing occurs. If BDES fails to complete the planned public improvements for these areas, BDES shall be responsible for all costs to restore these areas to a condition satisfactory to DPW.

5. RIGHT OF PROTECTION

- A. Upon reasonable notice to the City, BDES shall have the right to enter upon the City right of way from time to time for the purposes of the protection of the Conduit, including but not limited to conducting inspections, surveys, preparing appraisals, conducting soils tests or engineering studies, and obtaining other information about the right of way.
- B. BDES's entry onto the right of way for the purposes set forth herein and its activities on the right of way as permitted herein shall occur at the sole risk of BDES. BDES shall indemnify, hold the City harmless and defend the City from and against any and all claims, liens, damages, losses and causes of action which may be asserted by BDES or BDES's employees and agents or any third party as a result of any such entry, including reasonable attorney's fees. BDES's entry onto or testing of the right of way shall be conducted in a manner that minimizes any disturbance to the land and to the use and enjoyment of the right of way by the City or the public. Subsequent to completing said inspections, surveys and tests, BDES shall, at its sole expense, return the right of way as nearly as is practicable to the same and as good a state and condition as they were immediately prior to BDES's entry unless otherwise required by a permit or permit condition issued by the City concerning said work.
- C. BDES shall be required to register as an active utility through Vermont Dig Safe, and shall participate in locating and marking the Conduit when a Dig Safe ticket is required. Conduit shall be marked with utility locating tape a minimum of twelve inches (12") above Conduit. Conduit shall be installed with locating tracer wire to be easily located and marked for above ground identification.
- D. BDES shall provide post construction As-Build drawings to the City, depicting in detail the final location and depth of Conduit that is the subject of this agreement, within six (6) months of completion of construction.
- E. BDES 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.

6. **PERMITS**

- A. BDES is subject to any and all applicable permits, applicable permit fees, and permit conditions required for the above stated activity by the City, including but not limited to applicable permits for land use, excavation, obstructions, storm water and building construction. Prior to the commencement of work, BDES must pay all

permit fees and obtain all requisite governmental approvals and permits necessary to construct, maintain and use the Conduit and the improvements benefiting from the Conduit described herein. All work done and improvements made in connection with the Conduit granted herein shall be completed in accordance with the governmental approvals and permits issued to BDES and shall be made at BDES's sole cost and expense. BDES shall restore the City right-of-ways, if disturbed, following any disturbance in accordance with all governmental regulations, permits and approvals, and such restoration shall be made at BDES's sole cost and expense.

7. FEES

- A.** In further consideration of the undertakings of BDES set forth herein, the City agrees to waive excavation permit fees for the portion of excavation occurring in the street, sidewalk and greenbelt of this Agreement, pursuant to Burlington City Ordinance Chapter 27-30, and to accept full width pavement restoration consisting of a full width curb-to-curb two-inch (2") mill/fill paving of the entire Conduit location as depicted and shown on the Plan.
- B.** An Administrative and Inspection fee under the excavation permit in Burlington City Ordinance Chapter 27-30 will be applicable per square foot of disturbance in the City right of way. An Administrative and Inspection fee for the current year will be applied.
- C.** BDES shall pay an annual fee to the City to defray the municipal costs attributable to BDES's construction in and occupation of the City's right of way, as provided by this Agreement, in the amount of two and one-half percent (2.5%) of annual gross revenue. This fee shall be paid to the Burlington City Clerk-Treasurer's Office. This fee shall be in addition to any other applicable City fees, including but not limited to land use, excavation, obstruction, storm water, building permit or other permit fees associated with permits that BDES must obtain for the activities associated with this Agreement.

8. PAYMENT FOR FAILURE TO PERFORM

Except as otherwise provided in this section, if BDES fails to perform its obligations hereunder as and when called for, then, after thirty (30) days written notice by the City, BDES shall make payment to the City of reasonable compensation for the failure to perform. Upon failure to timely cure by BDES, City also shall have the right, in its sole discretion, to recover all amounts expended by the City in furtherance of the purposes

and terms of this Agreement, and to pursue any further legal or equitable remedies provided by law, including specific performance, damages, and attorneys' fees. In the event of a dispute between the Parties under this Agreement, the prevailing party shall be entitled to collect all costs of suit, including reasonable attorneys' fees.

BDES shall not have the right to an additional 30 days written notice for the failure to relocate or obtain the permits required in Sections 2.D and 6 hereof.

9. INSURANCE

BDES shall maintain in effect throughout the term of this Agreement 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 one million dollars (\$1,000,000) each occurrence and three million dollars (\$3,000,000) general aggregate. The City shall be named as an additional insured on such insurance policy.

Prior to execution of this Agreement, BDES shall furnish the City with a certificate of insurance which shall include the provision that the City is named as an additional insured and shall give the City 30 days written notification prior to cancellation of such insurance. The certificate shall be attached to this Agreement.

It is the responsibility of BDES to ensure that a current certificate of insurance is on file with the City at all times.

10. INDEMNIFICATION

BDES agrees to indemnify, defend and hold the City harmless and free from any and all liability, demands, claims, causes of action, suits, actions, costs and expenses (including attorneys' fees and disbursements), losses, injuries, death, or damages, judgments or executions, of whatever kind or nature, including reasonable attorneys' fees, arising out of BDES's use of the right of way pursuant to this Agreement. This includes any claims arising out of any indemnity and third party claims. BDES agrees to make no claim against the City or any of its officers, employees, agents or representatives for any loss or damage caused by the City's use or maintenance of its right-of-way, unless caused by the gross negligence or an intentional act of a City employee, contractor or agent.

11. REVOCATION

This Agreement shall be immediately revoked without notice in the event BDES discontinues the use of the Conduit. Upon revocation, BDES must remove at its own expense the Conduit and any appurtenances thereto. If BDES refuses to promptly remove the Conduit and any appurtenances thereto, they may be removed by the City and BDES shall be liable for all reasonable expenses of such removal.

12. NUISANCES PROHIBITED

BDES shall not, during the effectiveness of this Agreement, maintain the Conduit in a manner which creates a nuisance or violation of any applicable City ordinance, State or Federal statute, or controlling bylaw, 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. Such prohibition of nuisances or violations of law shall include permitting the creation of a nuisance or violation of law.

13. ASSIGNMENT OF RIGHTS

BDES shall not sell or assign its rights pursuant to this Agreement or permit the use of the premises or any part thereof by any other entity without the express prior written consent of the City. Any unauthorized action in violation of this Section shall be void, and shall, after sixty (60) days written notice to BDES, terminate BDES's rights pursuant to this Agreement.

14. LIMITATION OF RIGHTS

BDES acknowledges that no property or other right is created other than that specifically defined and limited by this Agreement, and by entering into this Agreement, neither BDES nor the City shall be deemed to have waived or relinquished any of its common law or statutory rights as a property owner. If BDES alleges that it has or will be irreparably harmed by a bad faith action of the City under this Agreement, nothing contained herein shall prohibit BDES from pursuing any legal or equitable remedies provided by law, including specific performance, damages and attorney's fees.

DATED at Burlington, Vermont, this _____ day of _____, 2023.

CITY OF BURLINGTON

Witness

By: _____
Miro Weinberger, Mayor
Duly Authorized Agent

BURLINGTON DISTRICT ENERGY, INC.

Witness

By: _____
Duly Authorized Agent

DRAFT