



RFP# 013-25

## **BURLINGTON ELECTRIC DEPARTMENT REQUEST FOR PROPOSAL**

### **Emissions Assessment and Reduction Analysis For McNeil**

#### **Background:**

The Burlington Electric Department (BED) is Vermont's largest municipally owned electric utility serving over 21,000 customers. BED is the exclusive provider of electric service to the city of Burlington, an area of approximately 16 square miles, and the Burlington International Airport in South Burlington.

As a public utility, BED is an expression of the community's energy desires and beliefs. In 1990 Burlington voters approved an \$11.3 million bond to fund energy efficiency programs that supported successful activities through 2002. Since 2003, BED customers have been paying a small monthly charge that supports these continued "Energy Efficiency Utility" programs, which BED staff delivers on behalf of its customers under an Order of Appointment from Vermont's Public Utility Commission (PUC).

Burlington first experimented with wood chip generation by co-firing the Moran coal plant with wood in the 1970's. Following successful pilots there, the McNeil Generating Station ("McNeil"), a 50 megawatt wood-chip electric generating plant was built and started operating in 1984. The McNeil plant is jointly owned by BED (50%), Green Mountain Power (31%), and Vermont Public Power Supply Authority (19%), collectively referred to as the Joint Owners. The Joint Owners made a \$12 million investment in a Regenerative Selective Catalytic Reduction (RSCR) system to significantly reduce NOX emissions in 2008. McNeil has been qualified as a renewable generator for purpose of selling renewable energy certificates (REC), including Connecticut Class 1 RECs. Unique among BED's renewable energy generators, McNeil is dispatchable and can store fuel on-site and run when prices are advantageous, with operations adjusted upwards or downwards based on market economics.

McNeil includes approximately 35 full time employee positions (FTE), including four professional licensed foresters who work to sustainably procure wood chips for the plant. Wood chips are delivered from Vermont and, via Swanton wood yard rail, upstate New York. McNeil's wood procurement contract requires that no wood be harvested

solely for energy production, rather McNeil will accept wood residues (tops and limbs), diseased or damaged trees, and non-commercial wood left over from harvest operations. McNeil also accepts mill residues, and wood from the Waste Wood Yard operated to keep clean untreated wood from being landfilled. McNeil uses a very small volume of low-value roundwood, kept on-site for fuel security purposes. For more on McNeil and McNeil Forestry see [www.burlingtonelectric.com/mcneil](http://www.burlingtonelectric.com/mcneil) and <https://www.burlingtonelectric.com/forestry>.

With the purchase of the Winooski One Hydroelectric Facility in 2014 (a 7.4 megawatt plant located on the Winooski River), Burlington became the first city in the United States to source 100 percent of its electricity from renewable sources. BED, based on local and state policy objectives, does not contract for energy from nuclear or fossil fuel resources. Having achieved this renewable energy goal BED and the City announced in 2019 a strategic plan to make Burlington a “net zero energy (NZE)” and launched the NZE Roadmap ([www.burlingtonelectric.com/nze](http://www.burlingtonelectric.com/nze)). The NZE strategy is focused on reducing and eliminating fossil fuel use and associated greenhouse gas emissions in the thermal and ground transportation sectors.

BED currently sources electric power locally, and from New England and adjoining states and territories, with a strong preference for generation closest to Burlington.

BED recognizes carbon accounting for energy production from wood/bio-based resources is more complex than other resources, and that there are various ways to look at emissions including lifecycle (such as done by National Renewable Energy Laboratory), at the stack, and based on wood source using the debt and dividend approach. Through this RFP and recognizing the commitment Burlington and BED have to addressing the climate emergency, BED endeavors to learn more about how to reduce the environmental footprint of McNeil, including reduction in stack greenhouse gas emissions and other greenhouse gas emissions, while retaining the energy production benefits from the plant. BED recognizes the Joint Owners ultimately have decisional authority, not BED or Burlington unilaterally, as it relates to the McNeil plant.

## **Current Data and Documents**

For the benefit of respondents, below are several relevant documents or prior studies related to the McNeil Generating Station. Please note that some members of the community have raised concerns or disagreement with certain assumptions or methodologies in some of the prior studies. Respondents can learn about some of the critiques by viewing the June 2023 TEUC forum (included below) and reading the minutes from the August 22<sup>nd</sup>, 2024 joint Electric Commission/TEUC meeting. BED expects respondents to exercise their own independent judgement on the appropriate framework(s) to apply for carbon accounting and greenhouse gas emissions reduction methodologies.

- November 2023 District Energy City Council Resolution (“Resolution”) (specifically review lines 126-165 for context on this RFP) - <https://burlingtonvt.portal.civicclerk.com/event/6667/files/attachment/2027>
- 2022 VEIC analysis on lifecycle greenhouse gas emissions at McNeil - <https://www.burlingtonelectric.com/wp-content/uploads/VEIC-Final-Memo-toBED-LCA-of-GHG-emissions-4.29.22-.pdf>
- 2023 Economic Analysis by Innovative Natural Resource Solutions (a “refresh” of a similar study from 2020 performed at the request of the Vermont Department of Public Service) - <https://www.burlingtonelectric.com/wpcontent/uploads/McNeil-Economic-Impact-26-June-2023.pdf>
- 2023 Carbon and Forestry Analysis by Innovative Natural Resource Solutions - <https://www.burlingtonelectric.com/wp-content/uploads/McNeil-Carbon-6.2023.pdf>
- 2023 City Council Transportation, Energy and Utilities (TEUC) Forum on McNeil - <https://www.cctv.org/watch-tv/programs/burlington-transportation-energyand-utilities-committee-mcneil-symposium>
- 2023 First Environment Carbon Score GREET analysis for proposed district energy system at McNeil - <https://www.burlingtonelectric.com/wpcontent/uploads/CI-Model-Letter-Report-draft-ver-3.pdf>

## **RFP Objectives/Scope of Work**

The RFP objectives are outlined in the Resolution linked to above and the scope of work is as follows:

- Analyzing the impacts, both negative and positive, of the current wood chip based energy production at McNeil;
- Analyzing opportunities to reduce stack-related carbon dioxide emissions and other greenhouse gas emissions from McNeil;
- Analyze the opportunity to repower McNeil, including with different fuels that would significantly reduce greenhouse gas emissions at the stack as bridge measure until truly low carbon sources of electricity such as wind, solar, hydropower and storage technologies can reliably and affordably meet the needs of Burlington ratepayers, including low and moderate-income ratepayers;
- Analyzing technologies that would significantly reduce greenhouse gas emissions in the future, including more efficient combustion;
- Analyzing the possible utilization of the McNeil Site for additional energy needs including energy storage and/or thermal energy provision;
- Analyzing the opportunities for expansion of innovative partnerships at McNeil such as the UVM solar research center newly located at the McNeil site; and

- Analyzing the scale and types of renewable energy generation and energy storage needed if McNeil was not in service and Burlington still needed lowest-carbon emissions renewable generation that is both reliable and affordable particularly for low and moderate-income ratepayers.

Factors to consider and include as the above analysis is conducted, again based on the Resolution, include:

- Ensuring consideration of the need for reliable and cost-effective electric and thermal power for the City now and into the future;
- Considering how any changes at McNeil might impact the ISO-New England system reliance on fossil fuels for generation;
- Including carbon accounting, timeframes, and assessment of the comparative practicality and cost and rate impacts over the short, medium and long term to Burlington electric and heating customers of any proposed alternatives;
- Understanding any changes in BED's power cost risk stability and risk profile of considered alternatives.

BED is looking to select a well-qualified firm to conduct this analysis and deliver a written report that will help shape future energy initiatives at McNeil. Respondents should also be aware of and include in their proposal, staff time for engagement (whether in person or remote) in several public meetings during the process of conducting the deliverables and final report, consistent with the City Council Resolution.

### **Request for Proposals:**

BED is requesting proposals for an Emissions Assessment and Reduction Analysis for McNeil from a third-party firm that has the analytical capability and energy/environmental expertise to produce such a Report. As noted in the Resolution, the firm shall have experience analyzing emissions reduction and renewable energy technologies.

As noted in the Resolution, BED has provided this RFP for review to the Burlington Electric Light Commission, TEUC and City Council prior to issuance. Each entity's meetings included public comment. The McNeil Joint Owners have also been consulted prior to issuance. The scope of work/contract for a selected respondent is also subject to review by the Commission, TEUC and Council, and again subject to consultation by the Joint Owners.

Proposals should be no more than eight pages (not including appendices) and include, in addition to information on analytical capabilities, experience on renewable energy

generation alternatives, analyzing energy/efficiency and economic and greenhouse gas emissions reduction scenarios from power plants (with specific preference for experience analyzing wood generators), and relevant expertise of the organization and the key staff for this project (including projected staff hours), address the criteria below.

Proposals will be reviewed using the following **RFP Evaluation Criteria**:

- Has the necessary analytical capabilities to conduct energy/environmental/economic analyses to provide BED and Burlington with analysis of emission reduction opportunities and economic and energy impacts of such opportunities;
- Has a sufficient understanding of renewable energy generation to credibly examine alternatives for repowering the McNeil station.
- Has conducted relevant work in the past for municipal or state governments or utilities;
- Demonstrates the ability to take complex data and information and provide it in a way that is useful, and transparent, for a variety of audiences including policymakers, regulators, BED staff, and the general public;
- Outline of a project plan that meets BED's targeted timeline for an interim report (end of 2024) and final report (by Spring 2025);
- Demonstrates relevant experience presenting similar materials to policymakers, regulators, and the general public;
- Has other relevant expertise in utility and power sector analysis.
- Understanding of electric utility business and financial structures, as well as general utility rate economics.

### **Confidentiality Requirements:**

If portions of the submitted proposal are to remain confidential, information must be included clearly describing which portions of the package the proposer considers confidential along with justification as to why the information would be considered confidential under Vermont Access to Public Records law (see Public Records Section below) and PUC rules. BED is subject to public disclosure laws, so any RFP responses including proprietary/confidential materials should have those materials clearly marked and , and include specific justifications as to why the identified materials must remain confidential. In the event the proposer requests that part or parts of the submitted proposal remain confidential, a second copy of the proposal with all confidential portions redacted must be provided

### **Selection Process:**

During the evaluation process, BED reserves the right, where it may serve its best interest, to request additional information or clarifications. BED also reserves the right

to terminate the process following RFP response review if no viable responses are received.

BED recognizes that this request is unique in scope, and that further clarity is likely to be required as various options are developed/explored. Interested parties are urged to make responses as detailed as possible, while identifying areas where further detail is required or risks may exist. Questions should be directed to BED Purchasing, and responses to any such requests/questions will be made available to all interested parties.

**Submittal and Timeline:**

All RFP's must be submitted through our RFP portal website by 5:00 PM EST, October 30th, 2024. All RFP's are date and time sensitive and we cannot accept any submissions after the specified date and time. Please do not email the RFP to anyone at BED. If you do, such action will cause your submission to be invalid, and your response will not be accepted. BED will contact those entities to whom BED, following consultation laid out in the Resolution with the Burlington Electric Commission, TEUC and City Council, would like to extend a formal invitation and provide a program agreement for BED and the selected partner to sign.

**Amendment or Cancellation of RFP:**

BED reserves the right to amend or cancel this RFP at any time if the best interest of BED requires such action. BED also reserves the right to award all or a part of the RFP to any or several contractors or whatever is in the best interest of BED.

**Proposal Modifications:**

No additions or changes to any vendor's proposal will be allowed after the proposal due date unless such modification is specifically requested by BED.

**Proposal Expenses:**

BED assumes no liability for payment of any expenses incurred by any vendor in responding to this RFP.

**Acceptance or Rejection of Proposals:**

BED reserves the right to accept or reject any or all proposals submitted for consideration in whole or in part; and to waive technical defects, irregularities or omissions, if in its sole judgment, the best interests of BED will be served. BED further reserves the right to accept a proposal for a contract other than that with the lowest cost, and to negotiate separately with any source whatsoever in any manner necessary to

serve the best interests of BED. BED also reserves the right to award all or partial parts of the RFP to any or several contractors that are in the best interest of BED.

**Ownership of Proposals:**

All proposals submitted in response to this RFP shall become the sole property of BED.

**Oral Agreements and Arrangements:**

Any alleged oral agreement or arrangement made by a vendor with BED or any BED employee will be disregarded in any BED proposal evaluation or associated award.

**Vendor Presentation of Supporting Evidence/Surety:**

Vendors must be prepared to provide any evidence of experience, performance ability, and/or financial surety that BED deems necessary to fully establish the performance capabilities represented in their proposals.

**Vendor Misrepresentation or Default:**

BED reserves the right to reject the proposal of any vendor and void any award resulting from this RFP to a vendor who materially misrepresents any product or defaults on any BED contract.

**Erroneous Awards:**

BED reserves the right to correct inaccurate awards resulting from its clerical errors.

**Public Records:**

Due regard will be given for the protection of proprietary information contained in all proposals received; however, vendors should be aware that all materials associated with the procurement are subject to the terms of the Vermont Access to Public Records Act (1 V.S.A. Chapter 5, Subchapter 3) and all rules, regulations and interpretations resulting from, and any other applicable rules, regulations or judicial decisions regarding access to the records of government.

It will not be sufficient for vendors to merely state generally that the proposal is proprietary in nature and not therefore subject to release to third parties. Those particular pages or sections which a vendor believes to be proprietary and of a trade secret nature must be specifically identified as such and must be separated from other sections or pages of their proposal. Convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 316 of Title 1 of the Vermont Statutes Annotated must accompany the proposal. The rationale and explanation must

be stated in terms of the prospective harm to the competitive position of the vendor that would result if the material were to be released and the reasons why the materials are legally exempt from release pursuant to the above cited statute. Between a vendor and BED, the final administrative authority to release or exempt any or all material so identified, rests with BED. All such materials should be submitted in a separate sealed envelope and marked "CONFIDENTIAL" and as noted above, non-confidential/redacted versions of any such documents must be provided as well..

It shall be the responsibility of any submitter seeking to maintain confidentiality to do so at their sole expense.

**Offer of Gratuities:**

The vendor warrants, represents and certifies that no elected or appointed official or employee of BED has or will benefit financially or materially from this procurement. Any Contract and/or award arising from this RFP may be terminated by BED if it is determined that gratuities of any kind were either offered to, or received by any of the aforementioned officials or employees from the vendor, the vendor's agent of the vendor's employees.

**Collusion:**

By responding, the vendors implicitly state that the proposal is not made in conjunction with any competing vendor submitting a separate response to this RFP and that it is in all respects fair and without collusion or fraud.

**Contract Provisions:**

The contract to be entered into between BED and the successful proposer shall contain negotiated provisions based on the specific requirements set forth in this RFP and the successful proposer's treatment thereof as contained in this proposal, as well as general BED contract provisions.

The final award of this contract will be subject to your firm's execution of such a contract and the contract's execution by BED and the issuance of a formal Purchase Order (P.O.) by BED's Purchasing Office. Proposals should include an acknowledgment that the standard provisions included in BED contracts are comprehended by your firm.

**BURLINGTON ELECTRIC DEPARTMENT (B.E.D.)**

MINIMUM INSURANCE REQUIREMENTS: TYPE 1A

**Contractor's Order**



**1.1** Contractor shall purchase and maintain insurance coverage for not less than the following limits:

	<u>COVERAGE</u>	<u>MINIMUM LIMIT</u>
a.	<b>Professional Liability:</b>	
	Professional Services	\$1,000,000 each claim \$1,000,000 in aggregate
b.	<b>Commercial General Liability:</b>	
	Bodily Injury and Property Damage	\$500,000 each occurrence \$500,000 in aggregate
c.	<b>Automobile Liability:</b>	
	Bodily Injury and Property Damage	\$500,000 combined single limit
d.	<b>Workers' Compensation and Employers Liability:</b>	
	WC: Statutory coverage	
	EL: \$100,000 each accident \$100,000 each employee \$500,000 policy limit	
e.	<b>Cyber Liability:</b>	
	Each Claim/Event Aggregate limit	\$2,000,000 each claim

\$2,000,000 each event

- 1.2** Contractor shall purchase and maintain such comprehensive general liability and other insurance as set forth above which will provide protection from claims arising from the result of Contractor's performance and furnishing of services outlined in the awarded Purchase Order and/or Contract, whether it is performed or furnished by Contractor or by anyone directly or indirectly employed by the Contractor to perform or furnish any of the work outlined in the Purchase Order and/or Contract. The Contractor shall hold B.E.D. harmless for any and all damages/claims (including but not limited to bodily/personal injury, property damage, loss of income, business interruption, or wrongful death), while performing or as a result of, work assigned/related to the awarded contract.
- 1.3** Contractor shall provide B.E.D. with a certificate of insurance for coverages set forth above which shall not be subject to cancellation without at least thirty (30) days advance written notice to B.E.D. Such evidence of insurance shall be received at B.E.D. before the commencement of work, or Purchase Order and/or Contract is awarded, whichever is sooner, and such insurance shall be maintained throughout the duration of awarded contract. Forward certificate of insurance to Burlington Electric Department, 585 Pine St., Burlington, VT 05401, Attention: Director of Purchasing & Facilities.
- 1.4** Any claim in excess of limits set forth above or which are not covered by the Contractor's comprehensive general liability, automobile liability, or worker's compensation insurance are the sole responsibility of the Contractor.
- 1.5** B.E.D. and/or any affiliated or subsidiary companies shall be recognized as additional insureds with respect to insurance. Coverage provided by the contractor shall be primary to any other valid and collectible insurance available with respect to B.E.D. as additional insured.

**Termination:**

The contract to be entered into between BED and the successful proposer shall contain the following provisions dealing with termination. If the Contractor fails to fulfill any of the terms of the agreement on time, BED shall have the right to terminate the said agreement immediately and award a new contract to another Proposer and the Contractor may be responsible for damages and for additional costs incurred in relending the contract.

**Disclaimer:**

BED is not liable for any costs incurred by proposers in the preparation of proposals or for any work performed prior to the approval of an executed contract.

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**Notification of Selection:**

Upon selection, BED and the successful proposer will negotiate a contract. The selected proposal in whole or in part as well as content from this RFP may be incorporated into and made a part of the final contract. Should negotiations fail to result in agreement within two weeks from the commencement of negotiations, BED reserves the right to terminate negotiations and select another proposal, issue a new RFP, or take other action consistent with the best interest of BED. By issuing this RFP, BED is not obligated to award a contract.

**Delivery of Proposals:**

There will be no formal RFP opening. As noted above, all RFPs are to be submitted through our RFP portal website only.

**RFP Opening:**

All Proposals will be opened only in the presences of BED personnel. There will be no formal RFP opening. All information in the RFPs will not be released until award by BED and acceptance by the winning contractor. If you would like to receive the RFP overview results after the award, you may do so only in writing to our Purchasing Department. If you would like to review the RFPs that were submitted, you must submit a letter to our Purchasing Department requesting a meeting to review the file.

**Right to Submit a Proposal on BED Projects:**

Any contractor that is in a good standing with all city departments within the City of Burlington, Vermont may submit a proposal for work described above. If a contractor is found to owe funds or has been removed from any RFP lists within any city department, its RFP will not be considered. Contractor must comply with all provisions as outlined in this RFP in order to be considered.

**BED Rights:**

BED reserves the right to accept or reject any or all proposals received in response to this RFP or to take other action consistent with the best interest of BED. BED reserves the right to negotiate separately with any source to serve the best interest of BED. Exceptions to this RFP shall be by written notification on the awarded P.O. to be binding. All submitted bids become the property of BED. After the award of the contract to the successful bidder, all bids are open for public viewing.

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# **ATTACHMENT D**

Burlington Livable Wage Ordinance

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

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

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

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

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

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

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Consultant

Subscribed and sworn to before me:

Date \_\_\_\_\_

\_\_\_\_\_  
Notary

**ATTACHMENT D - CONTINUED**

**NOTE: This ordinance only applies for contracts over \$15,000.**

ARTICLE VI. LIVABLE WAGES

**21-80 Findings and purpose.**

In enacting this article, the city council states the following findings and purposes:

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

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

**21-81 Definitions.**

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

- (a) *Contractor or vendor* is a person or entity that has a service contract with the City of Burlington where the total amount of the service contract or service contracts exceeds fifteen thousand dollars (\$15,000.00) for any twelve (12) month period, including any subcontractors of such contractor or vendor.
- (b) *Grantee* is a person or entity that is the recipient of financial assistance from the City of Burlington in the form of grants, including any contractors or subgrantees of the grantee, that exceed fifteen thousand dollars (\$15,000.00) for any twelve (12) month period.
- (c) *Covered employer* means the City of Burlington, a contractor or vendor or a grantee as defined above. The primary contractor, vendor, or grantee shall be responsible for the compliance of each of its subcontractors (or of each subgrantee) that is a covered employer.
- (d) *Covered employee* means an "employee" as defined below, who is employed by a "covered employer," subject to the following:

- (1) An employee who is employed by a contractor or vendor is a "covered employee" during the period of time he or she expends on furnishing services under a service contract with the City of Burlington, notwithstanding that the employee may be a temporary or seasonal employee;
- (2) An employee who is employed by a grantee who expends at least half of his or her time on activities funded by the City of Burlington is a "covered employee."
- (e) *Designated accountability monitor* shall mean a nonprofit corporation which has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and that is independent of the parties it is monitoring.
- (f) *Employee* means a person who is employed on a full-time or part-time regular basis. In addition, commencing with the next fiscal year, a seasonal or temporary employee of the City of Burlington who works ten (10) or more hours per week and has been employed by the City of Burlington for a period of four (4) years shall be considered a covered employee commencing in the fifth year of employment. "Employee" shall not refer to volunteers working without pay or for a nominal stipend, persons working in an approved apprenticeship program, persons who are hired for a prescribed period of six (6) months or less to fulfill the requirements to obtain a professional license as an attorney, persons who are hired through youth employment programs or student workers or interns participating in established educational internship programs.
- (g) *Employer-assisted health care* means health care benefits provided by employers for employees (or employees and their dependents) at the employer's cost or at an employer contribution towards the purchase of such health care benefits, provided that the employer cost or contribution consists of at least one dollar and twenty cents (\$1.20) per hour. (Said amount shall be adjusted every two (2) years for inflation, by the chief administrative officer of the city.)
- (h) *Livable wage* has the meaning set forth in Section 21-82.
- (i) *Retaliation* shall mean the denial of any right guaranteed under this article, and any threat, discipline, discharge, demotion, suspension, reduction of hours, or any other adverse action against an employee for exercising any right guaranteed under this article. Retaliation shall also include coercion, intimidation, threat, harassment, or interference in any manner with any investigation, proceeding, or hearing under this article.
- (j) *Service contract* means a contract primarily for the furnishing of services to the City of Burlington (as opposed to the purchasing or leasing of goods or property). A contract involving the furnishing of financial products, insurance products, or software, even if that contract also includes some support or other services related to the provision of the products, shall not be considered a service contract.

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

**21-82 Livable wages required. (FY 19 update)**

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- (a) Every covered employer shall pay each and every covered employee at least a livable wage no less than:
- (1) For a covered employer that provides employer assisted health care, the livable wage shall be at least thirteen dollars and ninety-five cents (**\$14.52**) per hour on the effective date of the amendments to this article.



(2) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least fifteen dollars and eighty-three cents (**\$16.20**) per hour on the effective date of the amendments to this article.

(3) Covered employees whose wage compensation consists of more or other than hourly wages, including, but not limited to, tips, commissions, flat fees or bonuses, shall be paid so that the total of all wage compensation will at least equal the livable wage as established under this article.

- (b) The amount of the livable wage established in this section shall be adjusted by the chief administrative officer of the city as of July 1 of each year based upon a report of the Joint Fiscal Office of the State of Vermont that describes the basic needs budget for a single person but utilizes a model of two (2) adults residing in a two (2) bedroom living unit in an urban area with the moderate cost food plan. Should there be no such report from the Joint Fiscal Office, the chief administrative officer shall obtain and utilize a basic needs budget that applies a similar methodology. The livable wage rates derived from utilizing a model of two (2) adults residing in a two (2) bedroom living unit in an urban area with a moderate cost food plan shall not become effective until rates meet or exceed the 2010 posted livable wage rates. Prior to May 1 preceding any such adjustment and prior to May 1 of each calendar year thereafter, the chief administrative officer will provide public notice of this adjustment by posting a written notice in a prominent place in City Hall by sending written notice to the city council and, in the case of covered employers that have requested individual notice and provided contact information to the chief administrative officer, by notice to each such covered employer. However, once a livable wage is applied to an individual employee, no reduction in that employee's pay rate is permissible due to this annual adjustment.
- (c) Covered employers shall provide at least twelve (12) compensated days off per year for full-time covered employees, and a proportionate amount for part-time covered employees, for sick leave, vacation, personal, or combined time off leave.

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

### **21-83 Applicability.**

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- (a) This article shall apply to any service contract or grant, as provided by this article that is awarded or entered into after the effective date of the article. After the effective date of the article, entering into any agreement or an extension, renewal or amendment of any contract or grant as defined herein shall be subject to compliance with this article.
- (b) The requirements of this article shall apply during the term of any service contract subject to the article. Covered employers who receive grants shall comply with this article during the period of time the funds awarded by the City of Burlington are being expended by the covered employer.

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

### **21-84 Enforcement.**

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- (a) Each service contract or grant covered by this article shall contain provisions requiring that the covered employer or grantee submit a written certification, under oath, during each year during the term of the service contract or grant, that the covered employer or grantee (including all of its

subcontractors and subgrantees, if any) is in compliance with this article. The failure of a contract to contain such provisions does not excuse a covered employer from its obligations under this article. The covered employer shall agree to post a notice regarding the applicability of this section in any workplace or other location where employees or other persons contracted for employment are working. The covered employer shall agree to provide payroll records or other documentation for itself and any subcontractors or subgrantees, as deemed necessary by the chief administrative officer of the City of Burlington, within ten (10) business days from receipt of the City of Burlington's request.

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

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

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

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

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

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

(d) Any covered employee who believes his or her covered employer is not complying with this article may file a complaint in writing with the city attorney's office within one (1) year after the alleged violation. The city attorney's office shall conduct an investigation of the complaint, during which it may require from the covered employer evidence such as may be required to determine whether the covered employer has been compliant, and shall make a finding of compliance or noncompliance within a reasonable time after receiving the complaint. Prior to ordering any penalty provided in subsection (e), (f), or (g) of this section, the city attorney's office shall give notice to the covered employer. The covered employer may request a hearing within thirty (30) days of receipt of such notice. The hearing shall be conducted by a hearing

officer appointed by the city attorney's office, who shall affirm or reverse the finding or the penalty based upon evidence presented by the city attorney's office and the covered employer.

- (e) The City of Burlington shall have the right to modify, terminate and/or seek specific performance of any contract or grant with a covered employer from any court of competent jurisdiction, if the covered employer has not complied with this article.
- (f) Any covered employer who violates this article may be barred from receiving a contract or grant from the city for a period up to two (2) years from the date of the finding of violation.
- (g) A violation of this article shall be a civil offense subject to a civil penalty of from two hundred dollars (\$200.00) to five hundred dollars (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any covered employee is not compensated as required by this article shall constitute a separate violation.
- (h) If a complaint is received that implicates any City of Burlington employee in a possible violation of this article, that complaint will be handled through the City's personnel procedures, not through the process outlined in this article.
- (i) Any covered employee aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against the covered employer within two (2) years after discovery of the alleged violation. The court may award any covered employee who files suit pursuant to this section, as to the relevant period of time, the following:
  - (1) The difference between the livable wage required under this article and the amount actually paid to the covered employee;
  - (2) Equitable payment for any compensated days off that were unlawfully denied or were not properly compensated;
  - (3) Liquidated damages in an amount equal to the amount of back wages and/or compensated days off unlawfully withheld or fifty dollars (\$50.00) for each employee or person whose rights under this article were violated for each day that the violation occurred or continued, whichever is greater;
  - (4) Reinstatement in employment and/or injunctive relief; and
  - (5) Reasonable attorneys' fees and costs.
- (j) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article. No person shall engage in retaliation against an employee or threaten to do so because such employee has exercised rights or is planning to exercise rights protected under this article or has cooperated in any investigation conducted pursuant to this article.

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

## **21-85 Other provisions.**

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- (a) No covered employer shall reduce the compensation, wages, fringe benefits or leave available to any covered employee in order to pay the livable wage required by this article. Any action in violation of this subsection shall be deemed a violation of this article subject to the remedies of Section 21-84.
- (b) No covered employer with a current contract, as of the effective date of this provision, with the City of Burlington for the use of property located at the Burlington International Airport may reduce, during the term of that contract, the wages of a covered employee below the livable wage as a result of amendments to this article.
- (c) Where pursuant to a contract for services with the city, the contractor or subcontractor incurs a contractual obligation to pay its employees certain wage rates, in no case except as stated in subsection (d) of this section, shall the wage rates paid pursuant to that contract be less than the minimum livable wage paid pursuant to this article.
- (d) Notwithstanding subsection (c) of this section, where employees are represented by a bargaining unit or labor union pursuant to rights conferred by state or federal law and a collective bargaining labor agreement is in effect governing the terms and conditions of employment of those employees, this chapter shall not apply to those employees, and the collective bargaining labor agreement shall control.
- (e) Covered employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the Earned Income Tax Credit under federal and state law.
- (f) The chief administrative officer of the city shall have the authority to promulgate rules as necessary to administer the provisions of this article, which shall become effective upon approval by the city council.

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

## **21-86 Exemptions.**

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

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

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

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

**21-87 Severability.**

.....  
If any part or parts or application of any part of this article is held invalid, such holding shall not affect the validity of the remaining parts of this article.

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

**21-88 Annual reporting.**

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

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

(Ord. of 10-21-13)

**21-89 Effective date.**

.....  
The amendments to this article shall take effect on January 1, 2014, and shall not be retroactively applied.  
(Ord. of 10-21-13)

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

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

- (1) The Contractor shall pay all “covered employees” as defined by the LWO (including covered employees of subcontractors or subgrantees) a livable wage (as determined, or adjusted, annually by the City’s chief administrative officer), and shall provide required paid time off for the term of the contract (*or the duration of the contracted project*);
  - (a) Full-time employees are entitled to 12 days of paid time off per year; and
  - (b) Part-time employees are entitled to 12 days of paid time off per year on a prorated basis;
  - (c) For a covered employer that provides employer assisted health care, the livable wage shall be at least \$17.96 per hour; and
  - (d) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least \$19.15 per hour.
  
- (2) The Contractor shall post a notice regarding the applicability of the LWO in the workplace or in other locations where covered employees normally work, and where such notice can be readily seen;
  
- (3) Upon request of the City’s chief administrative officer, the Contractor, for itself and, as applicable, for any of its subcontractors or subgrantees, shall provide payroll records, health insurance enrollment records, and other relevant documentation, as deemed necessary by the chief administrative officer, within ten (10) business days from receipt of the City’s request;
  
- (4) The Contractor shall cooperate in any investigation conducted pursuant to the LWO by the City’s designated accountability monitors or the City’s Office of City Attorney & Corporate Counsel;
  
- (5) The Contractor shall not retaliate, nor allow any of its subcontractors or subgrantees to retaliate, against an employee or other person because such employee or person has exercised rights or is planning to exercise rights protected under the LWO, or has cooperated in an investigation conducted pursuant to the LWO;
  
- (6) The Contractor is required to insert in all subcontracts the requirements of the LWO. The Contractor is liable for violations of the LWO committed by its covered subcontractors.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Contractor, or its duly authorized agent

Subscribed and sworn to before me:

Date: \_\_\_\_\_

\_\_\_\_\_

Notary Public

# Rights & Responsibilities

## Under Burlington's Livable Wage Ordinance

# \$17.96/hr

### WHEN

employer *provides* employer assisted health insurance

# \$19.15/hr

### WHEN

employer *does not provide* employer assisted health insurance

**and 12 days of paid time off per year\***

\*prorated for part-time employees

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

### COVERAGE

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

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

### ENFORCEMENT

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

### ADDITIONAL INFORMATION

To obtain additional information about your rights and responsibilities under the LWO, visit the LWO Webpage (<https://www.burlingtonvt.gov/CT/Livable-Wage-Ordinance>) or call 802-865-7000, option 1 (Office of the Clerk/Treasurer).

**Livable Wage July 1, 2024 - June 30, 2025**

Effective July 1, 2024

**TERMS and CONDITIONS**

1. These Terms and Conditions, together with the purchase order and/or contract issued by the Burlington Electric Department's (B.E.D.) Purchasing Office, constitute the entire agreement between B.E.D. and the supplier/contractor. Any modification to said agreement shall be submitted in writing by the party seeking said modification, to the other party. Said modification shall be agreed upon in writing by both parties in order for it to be enforceable. Absent said written modification, this form and said purchase order shall exclusively control the terms of the agreement between the parties.
2. Except as herein provided, no purchases ordered by unauthorized individuals shall be enforceable against B.E.D. Only individuals expressly designated as those vested with the authority to purchase on behalf of B.E.D. shall be considered persons possessing binding purchasing authority. Agreements entered into with unauthorized individuals shall be void and B.E.D. shall not be liable for any such unauthorized agreements.
3. Sellers, suppliers and contractors shall not assign, delegate, transfer, convey, sublet, or otherwise dispose of their rights, titles, interests or obligations under this contract, or their power to execute such contract to any other person, firm or corporation, without the previous written consent of B.E.D.'s Purchasing Office.
4. The parties to this agreement hereby agree that this contract is subject to the laws of the State of Vermont. The parties to this agreement further agree that Vermont's version of the Uniform Commercial Code, found in Title 9A of Vermont Statutes Annotated, shall apply.
5. B.E.D. may return any materials which are defective, unsatisfactory, or of inferior quality or workmanship, or fail to meet specifications or other requirements of this order.
6. B.E.D. reserves the right to cancel this order if goods are not shipped as directed. B.E.D. reserves the right to terminate its obligations under this order or any part hereof if any delivery/awarded service is not made in the time provided or, if no time is specified, within a reasonable time or if the material that is delivered/service provided is not as specified.
7. Seller shall ship in accordance with any instructions from B.E.D. and the requirements of common carriers to secure the lowest transportation costs. No shipments are to be made C.O.D., nor shall any such shipments be accepted. When goods or materials are shipped F.O.B. point of shipment, all freight charges are to be PREPAID by the Seller and added to the invoice total. An original copy of paid express or freight bill shall be attached to the invoice.
8. Seller shall furnish a packing slip with all shipments showing the purchase order number, seller name, catalog numbers, quantities (including back orders) and a full description of materials shipped.
9. Contractor shall furnish current Certificate of Insurance as outlined by B.E.D.'s Insurance Requirement Contractor's Order, a copy of which will be provided by B.E.D.'s Purchasing Office to the Seller. Such evidence of insurance shall be received at B.E.D. before the commencement of work, or Purchase Order and/or Contract is awarded, whichever is sooner, and such insurance shall be maintained throughout the duration of awarded contract. Seller shall be liable for any and/or all damages/claims (including but not limited to bodily/personal injury, property damage, loss of income, business interruption, or wrongful death), while performing or as a result of work assigned/related to the awarded contract.
10. The contractor shall be responsible for ensuring that all utilities are properly located, marked and identified through utilization of, and compliance with, the requirements of the "Dig Safe" program (30 V.S.A. §7001 et seq. and Vermont P.S.B. Rule 3.800). Contractor is responsible for working around existing utilities and agrees to indemnify and hold B.E.D. harmless for any damages to such utilities except for such damages whose sole proximate cause is due to negligence by B.E.D.
11. Seller shall follow all B.E.D. Safety Rules, a copy of which shall be provided, as well as follow good utility practices on details not covered in specification documents with preference given to B.E.D. Standard practices if suitable. Seller is responsible for following all applicable EPA/VOSHA/OSHA/NESC and NEC rules and regulations.
12. When the contract is awarded to provide services, the cost of service shall be a fixed fee or a time and material basis with a Not To Exceed amount. Expenses shall be billed at cost unless otherwise specified on the awarded contract. Seller shall furnish an invoice detailing Purchase Order number, scope of work, mileage and other expenses. If the contract is awarded on a time and material basis, the invoice shall also include dates worked, name of personnel, number of labor hours worked (traveled if chargeable), rate per hour and total labor, equipment rental hours and rates and materials. Seller shall be responsible to obtain all necessary permits and copies shall be furnished with each invoice. Seller shall also furnish documentation of all reimbursable expenses with each invoice.
13. Unless otherwise specified, payments shall be made on partial deliveries accepted by B.E.D. when the amount due on such deliveries so warrants. Progressive billing for services rendered shall be accepted unless fixed fee is quoted. Where there is a question of non-performance involved, payment in whole or part against which to charge back any adjustment required, shall be withheld. In the event cash discount is involved, the withholding of payment as provided herein shall not deprive B.E.D. from taking such discount.
14. In accordance with city regulations, invoices for completed purchase orders must be received by B.E.D.'s Accounts Payable by the 27th of each month to assure payment by approximately the 15th of the following month. Invoices received after that date shall be carried forward to the following month.
15. **All invoices shall be mailed to the ATTENTION of B.E.D.'s Accounts Payable.** Inquiries regarding the status of unpaid invoices shall likewise be directed to B.E.D.'s Accounts Payable.