CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS

645 Pine Street
Post Office Box 849
Burlington, Vermont 05402-0849
802.863.9094 VOX
802.863.0466 FAX
802.863.0450 TTY

Steven Goodkind, P.E.
DIRECTOR OF PUBLIC WORKS
CITY ENGINEER

Norman J. Baldwin, P.E.
ASSISTANT DIRECTOR OF PUBLIC WORKS

May 9, 2013

TO: **Burlington City Council Finance Board**

FROM: **Norman Baldwin, P.E.**
Assistant Director-Technical Services

RE: **Champlain Parkway Design and Legal Services Contract Amendments**

As city staff managing the Champlain Parkway Project we acknowledge the importance of having design and legal services contracts for this and other projects to stay within the Maximum Limiting Amounts authorized under its associated cooperative agreement.

Given we have nearly exhausted the funds authorized within the Champlain Parkway Cooperative Agreement Amendment #3. As described in our other Memorandum we have sought to gain the councils authorization to accept and execute the Champlain Parkway Cooperative Agreement Amendment #4. It is our hope that the Finance Board and Burlington City Council will continue its support for this project. The Champlain Parkway is funded through use of Federal, State and local funds. The Champlain Parkway is funded with 95% Federal Funds, 3% State Funds, a 2% local match obligation.

As a result of keeping our design and legal services contracts within the limits of our Cooperative Agreements, we coincidentally have exhausted and Design Contract and Legal Services Contract in support of this project. As a result, in addition to seeking the Finance Board and Burlington City Council authorization to accept and execute the Cooperative Agreement Amendment #4 with the State of Vermont . We are concurrently seeking authorization from the Finance Board and City Council's authorization to allow Director Steven Goodkind to execute contract amendment extension to:

- Clough Harbor and Associates,(CHA) who serves as our design consultant for the Champlain Parkway. Our design contract with CHA was originally issued on October 14, 1999 in the amount of 1,221,581.01. Since that time, a series contract amendments have been issued to CHA and we are currently working from Amendment #3 for an additional $185,000 was executed November 30, 2012 bringing the total contract amount to $5,947,750.69. We have exhausted contract Amendment #3 with CHA.

  In order to continue to advance this project, we are seeking the Finance Boards approval to authorize Director Steven Goodkind to execute Contract Amendment#4 with CHA. Contract Amendment #4 seeks to extend the current contract an additional $234,000 bringing the Total Contract with CHA under Amendment #4 to $ 6,181,750.69. Additionally,

- Shems Dunkiel Saunders provides specialized Legal Professional Services Contract in Support of the Act 250 Appeal Hearing Proceedings associated with the Champlain Parkway. We are seeking authorization to provisions and $145,000 in funds to support the continued expenses that would be assumed under the Shems Dunkiel Representation and Retainer Agreement.

For your benefit I am attaching the contract documents and some of the previous correspondence provided to the Finance Board from previous discussions and approvals.

Please feel free to call me if you have any questions. I intend on being at the meeting to answer any questions you may have.

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DEPARTMENT OF PUBLIC WORKS

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Steven Goodkind, P.E.
DIRECTOR OF PUBLIC WORKS
CITY ENGINEER

Norman J. Baldwin, P.E.
ASSISTANT DIRECTOR OF PUBLIC WORKS

October 2, 2012

TO: Board of Finance

FROM: Norman Baldwin, P.E.
Assistant Director-Technical Services

RE: Champlain Parkway-Design Contract Amendment

Attached please find the supporting documents for Amendment #3 to the design contract with Clough Harbour and Associates for the engineering and design of the Champlain Parkway.

The original agreement for Consultant Engineering Services was executed between the City of Burlington and CHA on October 14, 1999. The original contract amount total was $1,221,581.01.

Amendment No.1 to the Agreement for Consultant Engineering Services was executed between the City of Burlington and CHA on May 9, 2003. Amendment No.1 established a contract amount of $3,600,009.27

Amendment No.2 to the Agreement for Consulting Engineering Services was executed between the City of Burlington and CHA on November 18, 2010. Amendment No.2 established a contract amount of $5,763,063.18.

The current Cooperative Agreement, under Amendment No.3 with the State of Vermont, has a Maximum Limiting Amount(MLA) of $ 6,250,000.00. As of September 18, 2012, the project had an unexpended balance of $ 425,707.50.

We anticipate the Cooperative Agreement will be fully exhausted in eight to nine months.

It is our intent to:

- keep all of our contractual commitments within the limits of Cooperative Agreement, Amendment No.3.
- keep our consultants fully engaged working to advance this project until such time as the State of Vermont is prepared to issue a Fourth Amendment to the Cooperative Agreement.
- To maximize the use of the existing funds and keep CHA under contract working hard to advance the Champlain Parkway.

Clough Harbour expenses from remaining balance of MLA	$425,207.50x70%*=	$ 297,995.25
Clough Harbours Remaining Balance of Contract	Less current contract balance	-$ 113,307.72
Proposed Clough Harbour Contract Amendment within existing Cooperative Agreement, Amendment #3		$ 184,687.51

*70% is based on expense history of CHA expenses/Total Project Expense.

Under the proposed Contract Amendment #3 with CHA the existing contract would be increased by $184,687,51,which would bring the proposed contract amount with CHA to $ 5,947,750.69.

The funding ratio for the Champlain Parkway is 95% Federal, 3% State, and 2% Local. The city would be responsible for the local share of $3,693.75. The local share for this project is funded by the Street Capital Program.

SUMMARY

At this time we request that the BOF approve amendment No.3 with CHA and request that the City Council authorize Public Works director Steven Goodkind to execute Amendment No.3 with Clough, Harbour and Associates.

City of Burlington
Department of Public Works
Office of The City Engineer
645 Pine Street, Suite A
Burlington, VT 05402
802.863.9094 P
802.863.0466 F
802.863.0450 TTY
www.dpw.ci.burlington.vt.us

Steven Goodkind, P.E.
DIRECTOR OF PUBLIC WORKS
City Engineer

November 30, 2012

Dale E. Gozalkowski, P.E.
Clough Harbour and Associates, LLP
III Winners Circle
P.O. Box 5269
Albany, NY 12205-0269

Re: Amendment #3 to Contract #E86-218200

Dear Mr. Gozalkowski:

In accordance with Page 11 of the Agreement for Consultant Engineering Services dated October 14, 1999, the City of Burlington herby authorizes Clough Harbour and Associates, LLP to proceed with the work detailed in the amendment dated September 21, 2012. This amendment makes the new contract amount $5,947,750.69.

Please sign below as required and return the original to our office at the above address.

CLOUGH HARBOUR & ASSOCIATES, LLP

BY: _____

TITLE: Partner

CITY OF BURLINGTON, VERMONT

BY: _____

TITLE: DPW DIR.

An Equal Opportunity Employer
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December 20, 2011
Revised May 21, 2012
Revised June 28, 2012
Revised September 21, 2012

Norman Baldwin, P.E.
City of Burlington
Department of Public Works
645 Pine Street, Suite A
Burlington, VT 05402

Re: Champlain Parkway; Southern Connector MEGC – M5000 (1); CHA File: 8659

Dear Mr. Baldwin:

By way of this letter, we are requesting a revision to Amendment No. 2 to our agreement to continue to provide engineering services under the above-referenced project by and between the City of Burlington DPW and Clough Harbour & Associates LLP (CHA). As requested, we have revised the contract total for this amendment request to provide continued engineering support to the City of Burlington DPW related to:

- Act 250
- Coordination Committee Meetings

As requested, we have revised the previously developed task which will allow us to continue to support the City in their efforts to advance the project. To support our request, we have included an itemized narrative for this task based upon our understanding of the work to be completed.

This revised Amendment No. 2 request is comprised of additional compensation of $184,687.51 for CHA. This proposal will increase the Maximum Limiting Amount for the Agreement from $5,763,063.18 to $5,947,750.69.

Additional amendment requests will be necessary to complete the design and permitting phase of the project and for engineering support during construction.

We are available at your request to answer any questions that you may have or to provide additional information which you may require.

Sincerely,

Dale E. Gozalkowski, P.E.
Project Manager

DEG/dcc
Enclosures
U:\8659\PROP\Amendment 3\Revised September 2012\Revised Amendment 2 Letter 092112.doc

111 Winners Circle, P.O. Box 5269, Albany, NY 12205-0269
T 518.453.4500 • F 518.458.1735 • www.chacompanies.com

TASK I: CONTINUED PROJECT DEVELOPMENT

1. Commentary

As requested, this task covers the estimated costs associated with the advancement of the project through the MLA of the Cooperative Agreement between the City of Burlington and the State of Vermont for the Champlain Parkway.

Based on the recent appeals to the Environmental Court regarding the decision of the District Environmental Commission, the Act 250 proceedings have not concluded at the time of this amendment request. The estimated costs associated with this task are based on the project's design as presented in the April 2011 Land Use Application and do not account for the additional design associated with the conditions or design elements incorporated into the project as a result of the Land Use Permit, decisions of the District Environmental Commission, decisions of the Environmental Court or any other litigation brought against the City by the railroad or any other party.

Based on the latest project developments and City directives, CHA anticipates that the project team will continue to be involved in the Act 250 permitting process for several months. CHA assumes that the conclusion of the Act 250 process will provide a clear and final directive regarding the project's design features, limits and impacts. This would include providing engineering support during any additional negotiations and testimony required for the District Environmental Commission to issue the Land Use Permit for the Champlain Parkway.

CHA also anticipates continued involvement to conduct effective project meetings.

2. **Estimated Costs**

See "Champlain Parkway Revised Amendment No. 2" Spreadsheet

Total Direct Labor	$65,975.66
Overhead Cost @ 149.94%	$98,923.90
Fixed Fee	$19,787.95
Direct Costs	$0.00
Subconsultants	$0.00
TOTAL	**$184,687.51**

CHAMPLAIN PARKWAY
Revised Amendment #2
September 21, 2012

Fixed Fee	Direct Expenses	Subconsultants						Total
		Stantec	VSE	WAC	R. Watts	RSG	UMF	
$ 235,059.66	$ 140,258.23	$ 959,428.93	$ 228,522.32	$ 78,468.00	$ 7,206.75	$ 88,927.72	$ 35,801.18	$ 4,655,552.63
$ 2,247.78	$ 150.69	$ 17,863.99	$ -	$ -	$ -	$ -	$ -	$ 38,993.94
$ 3,962.76	$ 165.23	$ 14,505.55	$ 5,030.72	$ -	$ -	$ -	$ -	$ 56,687.30
$ 3,629.20	$ 1,943.80	$ 25,191.14	$ -	$ -	$ -	$ -	$ -	$ 61,007.47
$ 2,926.59	$ 324.67	$ 13,283.20	$ 1,943.82	$ -	$ -	$ -	$ -	$ 42,866.57
$ 3,160.76	$ 493.61	$ 17,272.31	$ 785.46	$ -	$ -	$ -	$ -	$ 48,051.79
$ 5,927.65	$ 355.71	$ 25,993.36	$ -	$ -	$ -	$ -	$ -	$ 81,673.80
$ 3,073.18	$ 160.22	$ 13,650.46	$ 2,903.33	$ -	$ -	$ -	$ -	$ 45,397.05
$ 3,419.16	$ 165.89	$ 10,827.85	$ -	$ -	$ -	$ -	$ -	$ 42,905.90
$ 4,685.10	$ 157.11	$ 5,470.59	$ 666.98	$ -	$ -	$ -	$ -	$ 50,022.32
$ 4,472.00	$ -	$ 2,291.43	$ -	$ -	$ -	$ -	$ -	$ 44,030.10
$ 1,672.20	$ 162.65	$ 1,634.61	$ -	$ -	$ -	$ -	$ -	$ 17,404.48
$ 3,682.56	$ 201.25	$ 5,075.60	$ -	$ -	$ -	$ -	$ -	$ 39,647.37
$ 2,168.80	$ 184.80	$ 20,178.69	$ -	$ -	$ -	$ -	$ -	$ 40,605.62
$ 2,256.06	$ 817.77	$ 9,844.68	$ -	$ -	$ -	$ -	$ -	$ 31,719.03
$ 3,062.93	$ 407.38	$ 5,674.33	$ -	$ -	$ -	$ -	$ -	$ 34,669.07
$ 1,727.01	$ 3.71	$ 2,985.55	$ -	$ -	$ -	$ -	$ -	$ 19,107.98
$ 2,772.20	$ 617.18	$ 5,604.39	$ -	$ -	$ -	$ -	$ -	$ 32,095.47
$ 3,850.63	$ 1,175.82	$ 5,299.83	$ -	$ -	$ -	$ -	$ -	$ 42,414.86
$ 4,099.62	$ 15.17	$ 3,529.61	$ -	$ -	$ -	$ -	$ -	$ 41,807.86
$ 2,635.53	$ 678.50	$ 3,631.98	$ -	$ -	$ -	$ -	$ -	$ 28,908.77
$ 2,010.19	$ 259.16	$ 1,984.89	$ -	$ -	$ -	$ -	$ -	$ 21,005.86
$ 721.67	$ 233.59	$ 5,837.91	$ -	$ -	$ -	$ -	$ -	$ 12,807.07
$ 800.29	$ 160.55	$ -	$ -	$ -	$ -	$ -	$ -	$ 7,629.93
$ 1,870.12	$ 327.65	$ 2,534.49	$ -	$ -	$ -	$ -	$ -	$ 20,316.62
$ 2,627.82	$ 163.20	$ 15,115.26	$ -	$ -	$ -	$ -	$ -	$ 39,804.78
$ 1,976.92	$ 3.09	$ -	$ -	$ -	$ -	$ -	$ -	$ 18,454.36
$ 1,788.70	$ 186.54	$ 5,927.72	$ -	$ -	$ -	$ -	$ -	$ 22,808.76
$ -	$ -	$ 5,929.98	$ -	$ -	$ -	$ -	$ -	$ 5,929.98
$ 563.21	$ 172.05	$ -	$ -	$ -	$ -	$ -	$ -	$ 5,428.71
$ 77,790.64	$ 9,686.99	$ 247,139.40	$ 11,330.31	$ -	$ -	$ -	$ -	$ 994,202.82
$ 312,850.30	**$ 149,945.22**	**$ 1,206,568.33**	**$ 239,852.63**	**$ 78,468.00**	**$ 7,206.75**	**$ 88,927.72**	**$ 35,801.18**	**$ 5,649,755.45**

$ 312,850.30	$ 149,945.22	$ 1,206,568.33	$ 239,852.63	$ 78,468.00	$ 7,206.75	$ 88,927.72	$ 35,801.18	$ 5,649,755.45

Shields, James

From: Norm Baldwin <nbaldwin@ci.burlington.vt.us>
Sent: Wednesday, September 19, 2012 12:24 PM
To: Gozalkowski, Dale
Cc: Shields, James; David Allerton; Steve Goodkind
Subject: Champlain Parkway-Project Update 9_18_12
Attachments: Champlain Parkway-Project Update_9_18_12.pdf

Dale,

To confirm our conversation earlier today. We have been instructed to pursue a contract amendment with your consulting firm that would allow us to advance the Champlain Parkway, making full use of the funds available under the current Cooperative Agreement, Amendment #3, MLA $6,250,000.

As you can see there is a unexpended balance within the current cooperative agreement of $425,707.50. As we advance the project exhausting these funds, the project will be assuming expenses from three organizations.

- Clough Harbor
- Shems Dunkiel
- City of Burlington

Applying the current pace of assigning bills to this project, we anticipate from here forward until we fully exhaust the funds from Cooperative Agreement Amendment #3, iClough Harbor will have billed us an additional $298,000. Given your current contract has a remaining balance of $113,000. We would anticipate that we will need to seek an extension of the our current CITY of Burlington/Clough Harbor contract by extending the existing contract by an addition $185,000.

Please let me know if there is a need for further clarification.

See attached document.

Norman J. Baldwin, P.E.
Assistant Director of Public Works
Burlington Public Works Department
645 Pine Street
Burlington, Vermont 05401

P (802) 865-5826
F (802) 863-0466
EMAIL: nbaldwin@ci.burlington.vt.us

CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS

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Steven Goodkind, P.E.
DIRECTOR OF PUBLIC WORKS
CITY ENGINEER

Norman J. Baldwin, P.E.
ASSISTANT DIRECTOR OF PUBLIC WORKS

September 18, 2012

TO: Steven Goodkind, P.E.
Director of Public Works

FROM: Norman Baldwin, P.E.
Assistant Director-Technical Services

RE: Champlain Parkway Update

We are currently working under the current Cooperative Agreement Amendment #3, with a Maximum Limiting Amount of $6,250,000.00.

CHAMPLAIN PARKWAY PROJECT BUDGET STATUS (Bills Current End to July)	
Maximum Limiting Amount(MLA)	$ 6,250,000.00
Project Balance	$ 5,824,292.50
Unexpended Balance	$ 425,707.50

CURRENT PACE OF BILLING:	
VENDOR	Pace
Clough Harbor	$35,000/month
Shems Dunkiel	$10,000/month
City of Burlington	$ 5,000/month
Total	$50,000/month

We anticipate Amendment #3 will be exhausted in 8-9 months, placing us into March-April 2013.

Clough Harbor Contract	
Contract Amount	$ 5,763,063.18
Current Contract Balance(End July)	$ 5,649,755.46
Unexpended Balance of Contract	$ 113,307.72

We anticipate at the current pace Clough Harbors current contract will be exhausted in 3+ months, exhausting the contract by the end of October 2012-November 2012.

VTRANS ISSUES WITH ISSUING AMENDMENT #4

Wayne Davis, program Manager for VTRANS is not willing to process a budget Amendment #4, until the city addresses the issues he has identified.

1. That all bills for the project need to be current within the month
2. All bills that are requiring re-submittal, be submitted.
3. My previous projections for what funds would be needed as a basis of the Amendment #4 were inadequate. Wayne is asking for the City to re-submit a more formalized and thorough examination of resource needs for the project. I have received confirmation from Wayne that he would support us putting together a cost proposal for Amendment #4 that would bring us through Final Design and Right of Way acquisition he would support the Amendment Request.

The Department of Public Works is currently working to address the issues presented to us by Wayne Davis :

ACTIONS TAKEN BY DPW TO ADDRESS VTRANS ISSUES

Billing Issues:

- All outstanding invoices have been paid and as of today we will have submitted all our outstanding invoices to VTRANS, with the exception of our rejected invoices valued at $1,432.30.
- My advice is to write off the rejected invoices as paid and not pursue backup that cannot be found or not worth the time and effort to pursue.

Recommended and Substantiated Dollar Figure for Amendment #4

- We have reached out to our consultants at Clough Harbor and they are putting together another contract amendment that would bring us to the completion of final design drawings and acquisition of Right of Way. They will have the number for us by Friday of next week, September 21, 2012.

Proposed-Clough Harbor Contract Amendment Within MLA, Amendment #3

Clough Harbor Expenses from remaining balance of MLA	$425,207.50X(35/50)=	$ 297,995.25
Clough Harbors Remaining Balance of contract	less current contract (-)	$ 113,307.72
Proposed Clough Harbor Contract Amendment within MLA#3		$184,687.53

I would propose we seek a contract amendment to Clough Harbor that is valued at $185K.

BREAKDOWN OF
REVISED AMENDMENT NO. 2

Consultant: Clough, Harbour & Associates LLP
Contract No.: E86-218200
Project Name: Southern Connector/Champlain Parkway
Project Number: MEGC-M5000(1)

Last State Audit
Submittal Year 2011

Date 9/21/12

Work Item	Direct Labor	Overhead	Fixed Fee	Direct Costs	Subconsultants	TOTAL
Task I	$65,975.66	$98,923.90	$19,787.95	$0.00	$0.00	$184,687.51
TOTAL	**$65,975.66**	**$98,923.90**	**$19,787.95**	**$0.00**	**$0.00**	**$184,687.51**

BREAKDOWN OF
REVISED AMENDMENT NO. 2

Consultant: Clough, Harbour & Associates LLP
Contract No.: E86-218200
Project Name: Southern Connector/Champlain Parkway
Project Number: MEGC-M5000(1)

Last State Audit
Submittal Year 2011

Date 9/21/12

Prime Consultant	Previous Contract Amount	Revised Amendment No. 2	TOTAL NEW CONTRACT
Direct Labor	$1,383,855.34	$65,975.66	$1,449,831.00
Overhead	2,144,975.82	98,923.90	2,243,899.72
Fixed Fee	312,693.82	19,787.95	332,481.77
Direct Expenses	197,059.52	0.00	197,059.52
SUBTOTAL	$4,038,584.50	$184,687.51	$4,223,272.01
Subconsultant			
Stantec Consulting Services, Inc.	$1,229,050.00	$0.00	$1,229,050.00
Vermont Survey and Engineering, Inc.	273,008.94	0.00	273,008.94
Werner Archaeological Consulting	78,468.00	0.00	78,468.00
Richard A. Watts, Inc.	16,881.41	0.00	16,881.41
Resource Systems Group	88,927.72	0.00	88,927.72
University of Maine at Farmington	38,142.61	0.00	38,142.61
SUBTOTAL	$1,724,478.68	$0.00	$1,724,478.68
TOTAL	**$5,763,063.18**	**$184,687.51**	**$5,947,750.69**

PCL XL error

Warning: IllegalMediaSize

Contract #E86-218200

CITY OF BURLINGTON, VERMONT
AGREEMENT FOR CONSULTANT ENGINEERING SERVICES
WITH
CLOUGH, HARBOUR & ASSOCIATES LLP

Project: Southern Connector
MEGC-M5000(1)

THIS AGREEMENT is made this 14th day of October, 1999 by and between the City of Burlington, a Vermont municipal corporation, hereinafter referred to as CITY and Clough, Harbour & Associates LLP, a partnership, with its principal place of business at 111 Winners Circle, P.O. Box 5269, Albany, New York 12205, authorized to do business in Vermont, hereinafter referred to as CONSULTANT.

WHEREAS, the CITY proposes to construct a project, hereinafter known as The Southern Connector, in the City of Burlington, Vermont; and

WHEREAS, state and federal funds may participate in the cost of the services described in this Agreement pursuant to the provisions of Title 23, United States Code; and 23 Code of Federal Regulations which are incorporated herein by reference; and

WHEREAS, the CONSULTANT is ready, willing, and able to perform the required services;

NOW THEREFORE, in consideration of these premises and the mutual covenants herein set forth, it is agreed by the parties hereto as follows:

1. SCOPE OF WORK

The CONSULTANT agrees to prepare final design and contract plans for the Southern Connector project. The services shall be performed substantially as set forth in the detailed Request for Proposals dated March 31, 1999 with Addendum #1 dated July 22, 1999, Attachment A; the CONSULTANT's Technical and Cost Proposals dated May 18, 1999, Attachment B, and the "Consultant Contract Attachment" dated July, 1999, Attachment C; all of which are incorporated herein and made a part of this Agreement. For any conflict between Attachments A and B, Attachment A shall govern.

2. TIME SCHEDULE

The CONSULTANT agrees that work to be performed under the Agreement shall adhere to the time schedule as detailed in Attachment B.

3. BEGINNING OF WORK AND TERMINATION

This Agreement shall be effective upon execution and work shall be completed on or before January 1, 2004.

4. THE AGREEMENT FEE

A. General. The CITY agrees to pay the CONSULTANT and the CONSULTANT agrees to accept as full compensation for performance for all services and expenses (including those of subconsultants) encompassed under this Agreement, payment at the rates specified in Attachment B.

For any rates not specified in Attachment B, the CONSULTANT shall request approval of the Municipal Project Manager prior to utilization or invoicing of such rates.

B. Maximum Limiting Amount. The total amount to be paid to the CONSULTANT and all subconsultants hereunder for all services shall not exceed a maximum limiting amount of $1,421,581.01.

C. The CONSULTANT'S overhead rate for this Agreement shall be based upon the actual audited overhead rate up to a maximum cap of 155%.

5. PAYMENT PROCEDURES

Invoices shall be submitted to Justin Rabidoux, Municipal Project Manager, 33 Kilburn Street, Burlington, Vermont 05401. One original and three copies are required.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CLOUGH, HARBOUR & ASSOCIATES, LLP
111 WINNERS CIRCLE
P.O. Box 5269
ALBANY, NEW YORK 12205

By: _____

Title: CEO

CITY OF BURLINGTON, VERMONT

By: _____

Title: DPW Director

CONSULTANT CONTRACT ATTACHMENT:

CONTRACT PROVISIONS

Includes:

1. RELATIONSHIP OF TRUST
2. INDEMNIFICATION
3. INSURANCE
4. COMPLIANCE WITH LAWS
5. CONTRACTUAL AGREEMENTS
6. OPERATIONAL STANDARDS
7. PROJECT DEVELOPMENT AND STANDARDS
8. PAYMENT FOR SERVICES RENDERED

July 1999

CONTRACT PROVISIONS:

Wherever used, abbreviations may be used in place of a word or phrase and definitions may be used to interpret statements for the meaning of words, phrases or expressions. The intent and meaning for abbreviations and definitions shall be interpreted as herein set forth:

AASHTO	American Association of State Highway and Transportation Officials
AGC	Associated General Contractors of America
AIA	American Institute of Architects
ANR	Agency of Natural Resources
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
AWS	American Welding Society
CADD	Computer Aided Drafting and Design
CES	Consultant Engineering Services
CFR	Code of Federal Regulations
DOT	United States Department of Transportation
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EDM	Electronic Data Media
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration, U.S. Department of Transportation
FRA	Federal Railroad Administration
FSS	Federal Specifications and Standards (General Services Administration)
FTA	Federal Transit Administration
SEIS	Supplemental Environmental Impact Statement
SIR	Self Insured Retention
U.S.C.	United States Code
USEPA	United States Environmental Protection Agency
VAOT	Vermont Agency of Transportation
VOSHA	Vermont Occupational Safely and Health Act
VSA	Vermont Statutes Annotated

1. RELATIONSHIP OF THE PARTIES

The Consultant recognizes and acknowledges that it has been selected by the City because of its preferred professional expertise and experience as a multi-disciplinary organization having the capacity to provide expertise in all facets of transportation facilities design. The Consultant acknowledges that it has been selected by the City because the City does not have, on its staff, personnel with the expertise and/or the time to provide the necessary services under this Agreement. Therefore, the Consultant commits itself to provide the expertise necessary to accomplish the entire scope of service in a fully competent and professional manner, without any

unreasonable delay.

2. INDEMNIFICATION

The Consultant agrees, to the fullest extent permitted by law, that it shall indemnify and hold harmless the City, its officers, agents and employees from liability for damages to third parties, together with costs, including attorneys' fees, incurred in defending such claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of the Consultant, its agents or employees, committed, in the performance of professional services to be provided by the Consultant under this Agreement.

The City is responsible for its own actions. The Consultant is not obligated to indemnify the City or its officers, agents and employees for any liability of the City, its officers, agents and employees attributable to its, or their own, negligent acts, errors or omissions.

In the event the City, its officers, agents or employees are notified of any claims asserted against it or them to which this Indemnification clause may apply, the City or its officers, agents and employees shall immediately thereafter notify the Consultant in writing that a claim to which the Indemnification Agreement may apply has been filed.

3. INSURANCE

GENERAL: Prior to beginning any work, the Consultant shall obtain, and shall make sure that all subconsultants obtain, the following Insurance Coverage. The certificate of insurance coverage shall be documented on forms acceptable to the City. Evidence of compliance with minimum limits and coverages, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the effective date of the Agreement. The insurance policy (ies) shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. Evidence of continuing coverage must be submitted to the City on an annual basis. Certified copies of any insurance policies may be required. The City shall be names as an additional insured on all such policies of insurance, except for the Worker's Compensation and Professional Liability insurance policies.

The Consultant is responsible to verify that:

(a) All subconsultants, agents or workers meet the minimum coverages and limits plus maintain current certificates of coverages for all subconsultants, agents or workers.

(b) All coverages shall include adequate protection for activities involving hazardous materials.

(c) All work activities related to the agreement shall meet minimum coverages and limits.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Consultant for the Consultant's operations. These are solely minimums that have been developed and must be met to protect the interests of the City. If during the project, it is determined that minimum limits are not sufficient, the Consultant shall adjust to levels deemed sufficient by the City.

GENERAL LIABILITY AND PROPERTY DAMAGE:

(a) With respect to all operations performed by the Consultant, subconsultants, agents or workers, it is the Consultant's responsibility to insure that general liability insurance coverage provides all major divisions of coverage including, but not limited to:

1. Premises Operations
2. Independent Contractors' Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Contractual Liability
6. Broad Form Property Damage
7. Medical Expenses
8. Collapse, Underground and Explosion Hazards

(b) The policy shall be on an occurrence basis with limits not less than:

1. General Aggregate	$2,000,000
2. Products-Completed/Operations Aggregate	$1,000,000
3. Personal Injury	$1,000,000 per individual
4. Each Occurrence	$5,000,000
5. Fire Damage (Any one fire)	$ 50,000
6. Medical Expense (Any one person)	$ 5,000

The Consultant will provide the City with current certificates of insurance for the Consultant and all subconsultants.

WORKERS' COMPENSATION: With respect to all operations preformed, the Consultant and all subconsultants shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

PROFESSIONAL LIABILITY INSURANCE

(a) General. This applies only to those Contracts specifically identified as requiring Errors &

Omissions (**E&O**) Insurance. The Consultant shall carry architects/engineers professional liability insurance covering errors and omissions made during their performance of contractile duties with the following minimum limits:

$5,000,000 - Annual Aggregate
$1,000,000 - Per Claim

(b) Deductibles. Prior to performing any work, the Consultant agrees to provide evidence of **E&O** insurance coverage defined under this Section. In addition, the Contractor agrees to attempt to maintain continuous professional liability coverage for the period of the agreement and whenever applicable any construction work related to this agreement, and for a period of five years following substantial completion.

AUTOMOTIVE LIABILITY: The Consultant shall carry automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the agreement. Each policy shall provide coverage with a limit not less than $1,000,000-Combined Single Limit.

4. COMPLIANCE WITH LAWS

GENERAL COMPLIANCE WITH LAWS: The Consultant shall comply with all applicable Federal, State and local laws.

Provisions of the Agreement shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both parties. If, for any reason, a provision in the Agreement, is judicially determined to be unenforceable or invalid, that provision shall be deemed severed from the Agreement, unless such provision is critical to the commercial purpose hereof, and the remaining provisions shall be carried out with the same force and effect as if the severed provisions had never been a part of the Agreement.

ENVIRONMENTAL REGULATIONS: Any Contract in excess of one hundred thousand dollars shall comply with all applicable standards, orders of requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), Section 508 of the Clean Air Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection City regulation (40 CFR Part 15), that prohibit the use, under non-exempt Federal Contracts, grants or loans, of facilities included on the EPA list of Violating Facilities. The provisions require reporting of violations to the grantor, City and to the USEPA Assistant Administrator for Enforcement (EN-329).

CIVIL RIGHTS and EQUAL EMPLOYMENT OPPORTUNITY: During performance of the Agreement, the Consultant will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, national origin, physical disability or veteran status.

The Consultant shall comply with the applicable provisions of Title VI of the Civil Rights Act of

1964 as amended, Executive Order 11246 as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR Part 60). The Consultant shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulations 49 CFR § 21 through Appendix C, and Regulations under 23 CFR § 710.405 (b). Accordingly, all subcontracts shall include reference to the above.

The Consultant shall comply with all the requirements of Title 21, VSA, Chapter 5, Subchapter 6 and 7, relating to fair employment practices to the extent applicable. A similar provision shall be included in any and all subcontracts.

DEBARMENT CERTIFICATION: When signing a Contract in excess of twenty five thousand dollars, the Consultant certifies under the penalty of perjury as directed by Federal Law (48 CFR 52,209-5), that, except as noted in the Agreements, the Consultant or any person associated therewith in the capacity of owner, partner, director, or officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds:

(a) is not currently under suspension, debarment, voluntarily exclusion or determination of ineligibility by any Federal agency;

(b) has not been suspended, debarred, voluntarily excluded or determined in eligible by any Federal agency within the past three (3) years;

(c) does not have a proposed debarment pending; and

(d) has not been indicted, convicted, or had a civil judgement rendered against him/her by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

LOBBYING: For any Agreement exceeding one hundred thousand dollars, the Consultant certifies by signing the Agreement, that to the best of their knowledge and belief on behalf of their signature:

(a) No Federal appropriated funds have been paid or will be paid by or to any person influencing or attempting to influence an officer or employee of a government agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, renewal, amendment or modification of any Federal Contract grant, loan or cooperative Agreement.

(b) They will complete and submit, in accordance with its instructions, Standard Form-LLL "Disclosure Form to Report Lobbying", if any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to

influence an officer or employee of a government agency or a Member of Congress in connection with the Federal Agreement, grant loan, or cooperative Agreement.

(c) They shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact, upon which reliance was placed when the Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into the Agreement, imposed by Section 1352, Title 31, U.S.C..

Section 1352 of Title 31, U.S.C., provides, in part, that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any government agency, Member of Congress, officer or employee of Congress, or employee of a Member of Congress, in the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement , or the expansion, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

TAX REQUIREMENTS: By signing the Agreement, the Consultant certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, he/she is in good standing with respect to payment, or in full compliance with a plan to pay, any and all taxes due the State of Vermont and the City of Burlington as of the date of signature on the Agreement.

ENERGY CONSERVATION: The Consultant shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act P.L. 94-165

CONTRACTUAL AGREEMENTS

REGISTRATION: The Consultant acknowledges that it is registered with the Vermont Secretary of State's office as a partnership authorizes to do business in the State of Vermont. This registration must be complete prior to contract execution.

ADMINISTRATION REQUIREMENTS: By signing the Agreement the Consultant agrees to comply with the following provisions and certifies that he/she or they are in compliance with the provisions of 49 CFR § 18.36 Procurement (i) Contract Provisions with principal reference to the following:

(a) Copeland "Anti-Kickback" Act. For any Federal-Aid Contracts or subcontracts for construction or repair, the Consultant agrees to comply with the Copeland "Anti-Kickback" Act 18 U.S.C. § 874, as supplemented by Department of Labor Regulations,

29 CFR § 3.

(b) Davis-Bacon Act. For any Federal-Aid construction contracts in excess of $2,000 the Consultant agrees to comply with the Davis-Bacon Act 40 U.S.C. §§ 276a to a-7, as supplemented by Department of Labor Regulations, 29 CFR § 5.

(c) Work Hours. For any Federal-Aid construction contracts in excess of $2,000 or in excess of $2,500 for other contracts involving employment of mechanics or laborers, the Consultant agrees to comply with the Contract Working Hours and Safety Standards Act, 40 U.S.C. §§ 327-330, as annexed by Department of Labor Regulations, 29 CFR § 5.

(d) Proprietary Rights. The parties under the Agreement hereby mutually agree that, of patentable discoveries or inventions should result from work performed under the Agreement, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. The Consultant, however agrees to and does hereby grant to the City, the State of Vermont and the United States Government an irrevocable, nonexclusive, non-transferable, and royalty-free license to practice each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as part of the work under the Agreement.

(e) Publications. All data, EDM, valuable papers and documents produced under the terms of the Agreement are property of the City. The Consultant agrees to allow access to all data, EDM, valuable papers and documents at all times. The Consultant shall not copyright any material originating under the Agreement without prior written approval of the City.

PERSONNEL REQUIREMENTS AND CONDITIONS: A Consultant shall employ only qualified personnel, for responsible authority to supervise and carry out the work. The City shall have the right to approve or disapprove key personnel assigned to administer activities related to the Agreement.

Except with the approval of the City, during the life of the Agreement, the Consultant shall not employ:

(a) Personnel on the payroll of the City who are directly involved with the awarding, administration, monitoring, or performance of the Agreement or any project (s) that are the subjects of the Agreement.

(b) Any person so involved within one (1) year of termination of employment with the City.

The Consultant warrants that no company or person has been employed or retained, other than a bonafide employee working solely for the Consultant, to solicit or secure this Agreement, and that no company or person has been paid or has an agreement with the Consultant to be paid,

other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award of making of the Agreement. For breach or violation of this warranty, the City shall have the right to annul the Agreement, without liability to the City, and to regain all costs incurred by the City in the performance of the Agreement.

The City reserves the right to require removal of any person employed by a Consultant, from work related to the Agreement, for misconduct, incompetence, or negligence, in the opinion of the City in the due and proper performance of its duties, or who neglects or refuses to comply with requirements of the Agreement.

TRANSFERS, SUBLETTING, ETC: The Consultant and all approved subconsultants shall not assign, sublet, or transfer any interest in the work, covered by an Agreement, without prior written consent of the City and further, if any subconsultant participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the City. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the Consultant of responsibility for the performance of that portion of the work so transferred. The form of the subcontractor's agreement shall be as developed by the Consultant and approved by the City.

The services of the Consultant, to be performed under the Agreement, are personal and shall not be transferred without written authorization of the City and, when applicable, approved by the State of Vermont and FHWA. Any authorized subagreements, exceeding ten thousand dollars in cost, shall contain all of the same provisions specified for and attached to the original Agreement with the City.

BEGINNING AND COMPLETION OF WORK: Consultant agrees to begin performance of services, specified in the Agreement, in accordance with the terms of the Agreement, as arranged in negotiations with the City, or within ten (10) days of the date of written notice to begin work by the City, and to complete the contracted services by the completion dates specified in the Section three (3) of the Agreement.

CONTINUING OBLIGATIONS: The Consultant agrees that if, because of death of a key employee of the partnership, it becomes impossible to effectively perform its services in compliance with the Agreement, neither the Consultant nor its surviving members shall be relieved of their obligations to complete the Agreement. However, the City may terminate the Agreement if it considers a death, incapacity, or transfer from company of any members to be a loss of such magnitude that it would affect the firm's ability to satisfactorily execute the Agreement. If termination occurs because of the Consultant's inability to do the work, the Consultant shall be responsible to reimburse the City for any increased cost which it incurs in completing the work.

OWNERSHIP OF THE WORK: The Consultant agrees that the ownership of all studies, data

sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM and other material prepared or collected by the Consultants, hereafter referred to as "instruments of professional service" are property of the City as they are prepared and/or developed during execution of the Agreement.

The Consultant shall surrender to the City upon demand or submit for inspection at any time any instruments of professional service that have been collected, undertaken or completed by the Consultant pursuant to the Agreement. Upon completion of the work, in full, these instruments of professional service will be appropriately endorsed by the Consultant and turned over to the City.

Data and publication rights to any instruments of service produced under this agreement are reserved to the City and shall not be copyrighted by the Consultant at any time without written approval of the City. No publications or publicity of the work, in part or in total, shall be made without the agreement of the City, except that Consultants may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.

RECORDS RETENTION: The Consultant agrees to retain, in company files, all books, documents, EDM, valuable papers, accounting records, and other evidence, pertaining to costs incurred for work performed under the Agreement, for a period of at least three (3) years after the final "date of acceptance" by the City, unless otherwise notified by the City. The Consultant further agrees that the City, the State of Vermont, FHWA or other authorized representatives of the Federal Government, shall have access to all the above information for the purposes of review and audit during the Agreement period and anytime within the aforementioned retention period. Copies of all the above referenced information shall be provided to the City if requested.

APPEARANCES:

(a) Hearings and Conferences. The Consultant shall provide professional services required by the City and necessary for furtherance of any work covered under the Agreement. Professional services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its contractual services covered under the Agreement.

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

The Consultant further agrees to participate in meetings with the City, the State of Vermont, FHWA, and any other interested or affected participant, for the purpose of review or resolution of any conflicts pertaining to the Agreement. The Consultant shall be paid for such services and for any reasonable expenses incurred in relation thereto.

(b) Appearance as Witness. If and when required by the City, a Consultant, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related Agreement, on behalf of the City. The Consultant shall be paid according to rate schedules specified in the cost proposal for such services and for any reasonable expenses incurred in relation thereto.

CHANGES AND AMENDMENTS: No changes or amendments of the Agreement shall be effective unless documented in writing and signed by authorized representatives of the City and the Consultant.

APPENDICES: The City may attach, to these specifications, appendices containing various forms and typical sample sheets for guidance and assistance to the Consultant in the performance of the work. It is understood, however, that such forms and samples may be modified, altered, and augmented from time to time by the City as occasions may require. It is the responsibility of the Consultant to ensure that they have the latest version applicable to the Agreement.

EXTENSION OF TIME: The Consultant agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by the Consultant for delays of hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the City may decide. Time extensions shall be granted by amendment, only for excusable delays, such as delays beyond the control of the Consultant and without the fault or negligence of the Consultant.

SETTLEMENTS OF MISUNDERSTANDINGS: In order to prevent misunderstandings and litigation, it is mutually agreed by all parties that the Public Works Commission and the City Council shall act as advisory boards on all questions arising under the terms of this Agreement.

Agreements subjecting costs to final audit, an administrative review regarding the audit will be sent to the Consultant. Any dispute arising from an administrative decision shall be appealed in writing within thirty (30) days of receipt.

FAILURE TO COMPLY WITH TIME SCHEDULE: It is mutually understood and agreed to, that neither party hereto shall be held responsible for delay in performing the work encompasses herein, when such delay is due to unforeseeable causes such as acts of God, or a public enemy, fire, strikes, floods, or legal acts of public authorities. In the event that any such causes for delay are of such magnitude as to prevent the complete performance of the Agreement within six (6) months of the originally scheduled completion date, either party may by written notice request to amend or terminate the Agreement.

CITY'S OPTION TO TERMINATE: The Agreement may be terminated in accordance with the following provisions:

(a) Breach of Contract. Administrative remedies - the City reserves the right to terminate a Contract for breach of Contract agreements. The Consultant shall be given written notice of any breach and a reasonable period, not to exceed fourteen (14) days, to cure the breach. If the breach is not cured, the City may, by a second written notice, terminate the contract. Termination for breach of Contract will be without further compensation to the Consultant.

(b) Termination for Convenience. In addition to its rights and options to terminate an Agreement as provided herein, the City may, at any time prior to completion of services under an Agreement, terminate the Agreement by submitting written notice to a Consultant, within not less than fifteen (15) days prior to the effective date, via certified or registered mail, of its intention to do so. If the termination is for the City's convenience, payment to the Consultant will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made plus reasonable overhead expenses for job shutdown and lost profits. However, if a notice of termination is given to a Consultant prior to completion of twenty (20) percent of estimated services, as set forth in the approved Work Schedule and Progress Report, the Consultant will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination, that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the City's approval.

The Consultant shall make no claim for additional compensation against the City by reason of such termination.

6. OPERATIONAL STANDARDS

RESPONSIBILITY FOR SUPERVISION: The Consultant shall assume primary responsibility for general supervision of Consultant employees and his/her or their subconsultants for all work performed under the Contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Agreement during the design phase (Phases A and B).

INDEPENDENCE: The Consultant shall act in an independent capacity and not as officers or employees of the City.

WORK SCHEDULE AND PROGRESS REPORT: Prior to initiating any work, the Consultant shall prepare, and submit to the City, a general work schedule showing how the Consultant will complete the various phases of work in order to meet the completion date in the contract. The City will use this general work schedule to monitor the Consultant.

During the life of the Contract, the Consultant will make monthly progress reports indicating the work achieved through the date of the report. The Consultant shall link the monthly progress

reports to the general schedule submitted.

The report shall indicate any matters that have or are anticipated to adversely affect progress of the work. The City may require the Consultant to prepare a revised work schedule, in the event that a specific progress achievement falls behind the scheduled progress by more than thirty (30) days.

UTILITIES: Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the Consultant will counsel with the City, plus achieve any necessary contacts and discussions with the affected owners, regarding any requirement necessary for revisions of facilities or existing installations, both above and below ground. Any such installations must be completely and accurately exhibited on any detail sheets or plans. The Consultant shall inform the City, in writing, of any such contacts and the results thereof.

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

INSPECTION OF WORK: The City shall, at all times, have access to the Consultant's work for the purposes of inspection, accounting, and auditing, and the Consultant shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Consultant shall permit the City or representative for the City the opportunity to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the Consultant pursuant to execution of the Agreement.

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

WRITTEN DELIVERABLES: Written deliverables, presented under terms of the Agreement, shall be on 81/2" by 11 paper, consecutively printed on both sides. Reports shall be bound and have a title page that identifies the name and number of the project and publication date. The report shall have a table of contents and each page shall be numbered successively. Draft reports shall be identified as such.

7. PROJECT DEVELOPMENT AND STANDARDS

PLANS RECORDS AND AVAILABLE DATA: The City agrees to make available, at no charge, for the Consultant's use all data related to the Agreement including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.

DESIGN STANDARDS: Unless otherwise specifically provided for in the Agreement, or directed in writing. Consultant services, studies or designs, that include or make reference to plans, specifications, special provisions, computations, estimates, or other data necessary for construction of a designed facility, shall be in conformance with applicable portions of the following specifications, manuals, codes or regulations, including supplements to or revisions thereof, adopted and in effect prior to award of the Agreement:

(a) VAOT's latest edition of the Standard Specifications for Construction..
(b) VAOT's Bridge Design Manual.
(c) All applicable AASHTO roadway, traffic, bridge, bicycle and pedestrian policies, guides and manuals.
(d) VAOT's manual on Survey.
(e) VAOT's Right-of-Way Manual.
(f) The Highway Capacity Manual.
(g) The ANSI/AASHTO/AWS D-1.5, Bridge Welding code.
(h) The MUTCD and Vermont Supplemental requirements.
(i) The Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals.
(j) Other City directives and guidelines current at the time of the Agreement and as may be issued by the City during the progress of the design.

In case of any conflict with the guidelines referenced, the Consultant is responsible to identify and follow any course of direction provided by the City.

DEVELOPMENT OF PLANS: Unless otherwise indicated in an Agreement, the provisions of these specifications shall apply to any contract requiring preliminary engineering services in connection with highway, bridge, bicycle, and pedestrian survey and design. The Consultant is responsible for the development of any and all work outlined in an Agreement.

The City shall establish the termini of the project and may substantiate other conditions relative to locations established in the Agreement. When required under the Agreement, the Consultant will produce an acceptable survey and/or set of plans between such termini and follow any established provisions.

Endorsement of a recommended alignment made, by the City, does not relieve the Consultant of the responsibility for making changes occasioned as a result of an alignment not conforming to standards or good engineering practices when the design is advanced. Nor is the Consultant relieved of changes developed by normal refinements.

Changes in work or Supplemental Agreements, requested or required of the Consultant by the City, involving extra work or additional services must be provided documented and approved prior to initiating action of any work.

ELECTRONIC DATA MEDIA: Consultant, subconsultants, or any representatives performing work related to the Agreement, are responsible to ensure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage.

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

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

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

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

8. PAYMENT FOR SERVICES RENDERED

PAYMENT PROCEDURES: The City shall pay, or cause to be paid to the Consultant or the Consultant's legal representative, progress payments, that may be monthly or as otherwise accepted by the City, as determined by the percentage of work completed, as documented by a progress report of such work duly attested, for each phase of the required services covered by the Agreement. When applicable, for other type of payment specified in the Agreement, the progress report shall summarize actual costs and any earned portion of fixed fee.

All invoices and correspondence shall indicate the applicable project name, project number and the Agreement number. At the City's request, the invoice shall further be broken down in detail between projects.

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

Invoices shall be submitted to the City; one original and three (3) copies are required.

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

The City agrees to pay the Consultant and the Consultant agrees to accept, as full compensation, for performance of all services rendered and expenses encompassed in conformance therewith, the type of fee specified in the Contract.

(a) Indirect Cost Rates. For actual cost contracts, the Consultant is responsible for furnishing the City with independently-prepared, properly supported, Indirect Cost Rates, in accordance with 48 CFR 52.216-7, for all time periods covered under the Agreement. These rates must be developed in accordance with the cost principles in 48 CFR Part 31. A Consultant's overhead rate shall be based upon an actual audited overhead rate, unless otherwise specified in the Agreement.

PAYMENT FOR ADDITIONS OR DELETIONS: The City may, upon written notice, and without invalidating the Agreement, require any changes to, additions to, or deletions from, the originally contemplated extent of the work, prior to completion of the Agreement by means of an amendment to the original contract. Any adjustments of this nature shall be executed under the appropriate fee established in the Agreement, based on the adjusted quantity of work, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such addition or deletion.

PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES: The City may, upon written notice, and without invalidating the Agreement, require changes resulting from revision or abandonment of work already satisfactorily performed by the Consultant or changes in the scope of the work.

The value of such changes, to the extent not reflected in other payments to the Consultant, shall be incorporated in an amendment and be determined by mutual agreement, in one or more of the following ways:

(a) Fixed Price. By a price that is not subject to any adjustment on the basis of the Contractor's expenses experienced in performing the work. The Contractor is fully responsible for all costs and resulting profit or loss.

(b) Rate Schedule. By unit prices designated in the Agreement, or by unit prices covered under any subsequent Agreements.

(c) Actual Cost. By amounts determined on the basis of actual costs incurred, as distinguished from forecasted expenditures.

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

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

Steve Goodkind, P.E.
PUBLIC WORKS DIRECTOR

Justin Rabidoux
PROJECT ENGINEER

P.O. BOX849
BURLINGTON, VT
05402-0849
(802)863-9094 P
(802)863-0466 F

MEMO

To: Southern Connector Coordinating Committee, Interested Parties
From: Justin Rabidoux, Municipal Project Manager JR
Date: October 29, 1999
Re: Clough, Harbour & Associates Design Contract

Please find enclosed a fully executed Final Design Contract between the City of Burlington and Clough, Harbour & Associates for the design of the Southern Connector.

RECEIVED
NOV 01 1999
Clough, Harbour & Associates

CLOUGH, HARBOUR & ASSOCIATES LLP
ENGINEERS, SURVEYORS, PLANNERS & LANDSCAPE ARCHITECTS

III WINNERS CIRCLE
P.O. BOX 5269
ALBANY, NEW YORK 12205-0269
TEL: 518-453-4500 • FAX: 518-453-3967
www.cloughharbour.com

October 26, 1999

Mr. Justin Rabidoux
City of Burlington
Department of Public Works
P.O. Box 849
Burlington, Vermont 05402-0849

Re: Southern Connector, Final Design Contract #E86-218200;
CHA File No.: 8659

Dear Mr. Rabidoux:

Enclosed please find the original executed Final Design Contract, with noted changes, in regard to the above referenced project.

If you have any questions, please do not hesitate to contact me or Dale Gozalkowski of my staff. We look forward to working with you on this very interesting project.

Sincerely,

CLOUGH, HARBOUR & ASSOCIATES LLP
ENGINEERS, SURVEYORS, PLANNERS
& LANDSCAPE ARCHITECTS

Thomas P. Karis, P.E., Associate
Transportation Section Manager

/dcc
Enclosure
U:trans\Clermont\contract\Burlington

CONTRACT REVIEW FORM

Town of Burlington – Southern Connector

THIS FORM IS TO BE FILED IN THE MAIN OFFICE CONTRACT FILE!

ROUTE TO:

_____ **Platt for review**
_____ **Dave Wahrlich**
_____ **Other:** _____
_____ **Return to PM** _____
_____ **Harbour for signature**

Project Managers requesting review of contract must complete the following section:

1. **CHA employee and section making request:** Kavis / Gozalkowski
2. **New or repeat Client:** ☒ **New** ☐ **Repeat**
3. **If repeat, how many projects have we done for Client:** ☐ **0-5** ☐ **5-10** ☐ **10+**
4. **Expected total revenue from project?** $1,041,500.00
5. **Estimated past revenue from Client** ☒ **0-500K** ☐ **500K-1M** ☐ **1M+**
6. **Type of services we are providing:** Highway Engineering and Environmental Support
7. **Should staff attorney contact Client to negotiate changes?** ☐ **Yes** ☒ **No**
8. **Has the technical section of proposal been accepted by Client?** ☒ **Yes** ☐ **No**
9. **When do you need the review/negotiations completed?** ☒ **Today Other:**
10. **Miscellaneous notes:**

STAFF ATTORNEY REVIEW: **DATE:** 10/25/99

✓	Approved as ~~drafted~~ Modified (can be signed) MAH
	Approved but be aware of (can be signed)
	See attached sheet for revisions & explanations
	Modification(s) to CHA standard contract approved as revised (can be signed)
	Modification(s) to CHA standard contract NOT approved; see attached comments
	Return signed copy of contract to Staff Attorney
	Other:

REMEMBER YOU MUST CONTACT THE STAFF ATTORNEY WHEN YOU PLACE A CONTRACT IN THE MAIN OFFICE FILES.

"Satisfying Our Clients by Meeting Their Needs Through Dedicated People Committed to Total Quality".

Steve Goodkind, P.E.
PUBLIC WORKS DIRECTOR

Justin Rabidoux
PROJECT ENGINEER

P.O. BOX 849
BURLINGTON, VT
05402-0849
(802)863-9094 Phone
(802)863-0466 Fax

October 14, 1999

Mr. Tom Karis, P.E.
Clough, Harbour & Associates LLP
111 Winners Circle
P.O. Box 5269
Albany, NY 12205-0269

Re: Final Design Contract:

Dear Tom:

Enclosed is the final approved design contract. Please sign the second page and return to our office.

As I noted in our phone conversation, there were two small changes that Steve Goodkind, DPW Director, made to the contract.

- *Page 8 of 17, subset (e), Publications:*
  The wording has been changed from ". . . and documents produced under terms of the Agreement shall be property of the City" to ". . . Agreement are property of the City." The same change occurs on Page 14 of 17 in the **PLANS RECORDS AND AVAILABLE DATA** paragraph.

- *Page 11 of 17, SETTLEMENTS OF MISUNDERSTANDINGS:*
  The Public Works Commission (our governing body) has been added as an advisory board.

Please call with questions, and we look forward to commencing work.

Sincerely,

Justin Rabidoux

Justin Rabidoux

Enc.
Cc: File

RECEIVED
OCT 21 1999
CLOUGH, HARBOUR
& ASSOCIATES

CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS

645 Pine Street
Post Office Box 849
Burlington, VT 05402-0849
802.863.9094 VOX
802.863.0466 FAX
802.863.0450 TTY
www.dpw.ci.burlington.vt.us

Steven Goodkind, P.E.
DIRECTOR OF PUBLIC WORKS
CITY ENGINEER

Justin Rabidoux
Project Engineer

May 9, 2003

Mr. Ray Gardeski
Clough, Harbour & Associates, LLP
P.O. Box 5269
Albany, NY 12205-0269

Re: Amendment #1 to Contract #E86-218200

Dear Mr. Gardeski:

In accordance with Page 11 of the Agreement for Consultant Engineering Services dated October 14, 1999, the City of Burlington hereby authorizes Clough, Harbour and Associates, LLP to commence work on Amendment #1 (Amendment Summary No. 1 attached). This amendment makes the new contract amount $3,600,009.28.

Please sign below as required and return the original to our office. Thank you for your effort to date, and let me know if you have any questions.

CLOUGH, HARBOUR & ASSOCIATES, LLP
11 WINNERS CIRCLE
P.O. BOX 5269
ALBANY, NY 12205-0269

BY: _____

TITLE: PARTNER

RECEIVED
MAY 12 2003
Clough, Harbour & Associates LLP

CITY OF BURLINGTON, VERMONT

BY: _____

TITLE: Municipal Project Manager

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

CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS

OFFICE OF PLANGINEERING
645 PINE STREET, SUITE A
BURLINGTON, VT 05402
802.863.9094 P
802.863.0466 F
802.863.0450 TTY
WWW.DPW.CI.BURLINGTON.VT.US

STEVEN GOODKIND, P.E.
DIRECTOR OF PUBLIC WORKS
CITY ENGINEER

November 18, 2010

Mr. Dale Gozalkowski
Clough Harbor & Associates LLP
P.O. Box 5629
Albany, NY 12205-0269

Re: Amendment #2 to contract MEGC 5000(1) also known as City Project # E86 218200

Dear Mr. Gozalkowski:

In accordance with Page 11 of the Agreement for Consultant Engineering Services dated October 14, 1999, the City of Burlington hereby authorizes Clough Harbor & Associates LLP to proceed with the work detailed in Amendment No. 2, dated May 18, 2010 ("Amendment #2"). Amendment #2 makes the new contract amount $5,763,063.18 and extends the contract term and project schedule to December 31, 2014.

Please sign below as required and return the original to our office.

CLOUGH HARBOUR & ASSOCIATES LLP
III WINNERS CIRCLE
PO BOX 5629
ALBANY, NY 12205-0269

BY: _____

TITLE: PARTNER

CITY OF BURLINGTON, VERMONT

BY: _____

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TITLE: DPW Director

Councilors Keogh,
Wright, Paul: Bd. of Finance

AUTHORIZATION TO AMEND CHAMPLAIN PARKWAY
DESIGN CONTRACT

In the year Two Thousand Ten.....
Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, the City entered into an Agreement for Consultant Engineering Services with Clough, Harbour & Associates LLP ("CHA") for the engineering and design of the Southern Connector, now known as the Champlain Parkway, on October 14, 1999, for a contract amount of $1,421,581.01; and

WHEREAS, Amendment No. 1 to the Agreement for Consultant Engineering Services was executed on May 9, 2003, establishing a total contract amount of $3,600,009.27 for work performed through October 2006; and

WHEREAS, since that time CHA has been working on the finalization of the Supplemental Environmental Impact Statement ("SEIS"), the Act 250 permit as well as advancing the design of the entire Champlain Parkway project; and

WHEREAS, Amendment #2 to the Agreement for Consultant Engineering Services will bring the contract documents up to date with the current invoicing schedule and cover the costs to continue the project through the Act 250 process (Spring/Summer 2011). After that time, CHA will be asked to submit an amendment request for final design for the bidding process; and

WHEREAS, the amount of Amendment #2 is $2,163,053.91 which brings the total contract amount to $5,763,063.18; and

CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS

OFFICE OF PLANGINEERING
645 PINE STREET, SUITE A
BURLINGTON, VT 05402
802.863.9094 P
802.863.0466 F
802.863.0450 TTY
WWW.DPW.CI.BURLINGTON.VT.US

STEVEN GOODKIND, P.E.
DIRECTOR OF PUBLIC WORKS
CITY ENGINEER

November 18, 2010

Mr. Dale Gozalkowski
Clough Harbor & Associates LLP
P.O. Box 5629
Albany, NY 12205-0269

Re: Amendment #2 to contract MEGC 5000(1) also known as City Project # E86 218200

Dear Mr. Gozalkowski:

In accordance with Page 11 of the Agreement for Consultant Engineering Services dated October 14, 1999, the City of Burlington hereby authorizes Clough Harbor & Associates LLP to proceed with the work detailed in Amendment No. 2, dated May 18, 2010 ("Amendment #2"). Amendment #2 makes the new contract amount $5,763,063.18 and extends the contract term and project schedule to December 31, 2014.

Please sign below as required and return the original to our office.

CLOUGH HARBOUR & ASSOCIATES LLP
III WINNERS CIRCLE
PO BOX 5629
ALBANY, NY 12205-0269

BY: _____

TITLE: PARTNER

CITY OF BURLINGTON, VERMONT

BY: _____

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

TITLE: DRW Director

KENNETH A. SCHATZ, Esq.
City Attorney
EUGENE M. BERGMAN, Esq.
Sr. Assistant City Attorney
NIKKI A. FULLER, Esq.
Assistant City Attorney
RICHARD W. HAESLER, JR., Esq.
Assistant City Attorney

CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
AND
CORPORATION COUNSEL

149 CHURCH ST.
BURLINGTON, VT 05401-8489
(802) 865-7121
(TTY) 865-7142
FAX 865-7123

April 22, 2010

Brian S. Dunkiel, Esq.
Shems, Dunkiel, Raubvogel & Saunders, PLLC
91 College St.
Burlington, VT 05401

Re: Representation and Retainer Agreement

Dear Brian:

Enclosed please find the Representation and Retainer Agreement I've signed on behalf of the City of Burlington.

We look forward to working with you as well.

Sincerely yours,

Kenneth A. Schatz
City Attorney and Corporation Counsel

Enclosure

cc: Carol Weston, Public Works Engineer, DPW

lb/KAS 2010/Brian Dunkiel re Representation and Retainer Agreement (Champlain Pkwy., etc.; environmental & regulatory issues)

The programs and services of the City of Burlington are accessible to people with disabilities.
For disability access information for the City Attorney's Office, please call 865-7121 (TTY information – 865-7142).

SHEMS DUNKIEL RAUBVOGEL & SAUNDERS PLLC

REBECCA E. BOUCHER*
ELIZABETH H. CATLIN
BRIAN S. DUNKIEL*
EILEEN I. ELLIOTT
GEOFFREY H. HAND

JESSICA A. OSKI
ANDREW N. RAUBVOGEL
MARK A. SAUNDERS
RONALD A. SHEMS*
KAREN L. TYLER

April 19, 2010

CITY ATTORNEY'S OFFICE
APR 20 2010
RECEIVED

Ken Schatz, Esq.
City of Burlington
City Hall
149 Church Street
Burlington, VT 05401

Re: Representation and Retainer Agreement

Dear Ken:

I am writing to document revisions to Shems Dunkiel Raubvogel & Saunders, PLLC's representation and retainer agreement with the City of Burlington. This letter shall serve to amend the terms of our representation contained in a letter dated July 31, 2008. The scope of our retainer includes regulatory matters and environmental permitting for special projects as requested by the City Attorney. At this time, the only matter for which we have been retained is obtaining permits for the Champlain Parkway. Any new matters for which we are retained will be documented in writing.

Partner-level attorneys will bill at $180.00 per hour. Associates will bill at $160 per hour. The rate for our paralegals is $100.00 per hour. Usual and customary expenses including computer research fees, postage, long-distance telephone and mileage will also be billed monthly. We will review and revise the terms of this representation and retainer agreement on or before April 30, 2012.

Please sign below, and return this letter to me if it is acceptable. We look forward to working with you.

Sincerely,

Brian S. Dunkiel
SHEMS DUNKIEL RAUBVOGEL & SAUNDERS PLLC
For the firm

Ken Schatz
for the City of Burlington