



September 27, 2013

TO: Board of Finance  
FROM: Church Street Marketplace Department  
RE: AUTHORIZE CITY OF BURLINGTON TO EXECUTE CONTRACT  
FOR \$28,625 WITH BARRETT'S TREE SERVICE FOR HOLIDAY &  
WINTERS LIGHTING ON THE CHURCH STREET MARKETPLACE, FALL  
2013 – THROUGH SPRING, 2016.

Beginning July 1, 2013, area contractors were invited to submit a fixed-price cost proposal for a three-year term for installing and removing lighting for two events:

1. HOLIDAY LIGHTS

- Set up begins in mid-October and must be completed and ready by mid November in advance of the Christmas shopping season
- installing garland and lights in each of 4 intersections (Main, College, Bank and Cherry)
- installing lights in each of the 77 trees on the Marketplace
- assisting in securing of the annual Christmas tree from a private home in the greater Burlington area; cutting down the tree and grinding out the tree stump
- decorating the Marketplace Christmas tree with lights
- assistance with removing lights and garland at intersections and trees

2. WINTER LIGHTS (Winter Light Walk)

- set up begins with the taking down of Holiday Lights and must be complete by the first Friday in February.
- installing a canopy of lights in three of the intersections which are full four sided three dimension overheads, light strings should be 1 foot apart
- installing strings of light in a single two dimensional plane at the intersection of Church and Main Streets. The middle intersection at Bank and Church Streets will have light strands

The RFP was posted on the City's website, and sent to area contractors. Criteria for selection were: 1) experience of contractor with outdoor lighting. The successful bidder must possess 3 years of experience in the provision of landscaping, or decoration of downtowns and/or services similar in nature and scope of work outlined. The successful bidder must possess all licenses required to operate machinery; 2) contractor's equipment; 3) cost proposal

Only one proposal was received by the July 31, 2013 deadline. Barrett's Tree Service has proposed the following: Holiday Lights (Holiday Season) \$22,950.00. Winter Lights (Winter Light Walk) \$5,675.00. Staff is recommending Barrett's proposal based on all three criteria. In addition, the company has been installing and removing lighting on the Church Street Marketplace since 2003. Barrett's has completed the Certification of Compliance with the City of Burlington Liveable Wage Ordinance and provided a certificate of liability insurance.

AUTHORIZE CITY OF BURLINGTON TO EXECUTE CONTRACT  
FOR \$28,625 WITH BARRETT'S TREE SERVICE FOR HOLIDAY & WINTER  
LIGHTING ON THE CHURCH STREET MARKETPLACE,  
FALL 2013 – THROUGH SPRING, 2016.

WHEREAS, the Church Street Marketplace Department is a City of Burlington department that manages the public right of way in the Church Street Marketplace District. The Church Street Marketplace Department is funded entirely through user fees;

WHEREAS, the Church Street Marketplace Department is constantly employing strategies to strengthen the brand and enhance the vitality of the Marketplace to insure it remains competitive as a place of commerce and community, versus other suburban destinations in the region.

WHEREAS, the Church Street Marketplace Department has used lighting since its founding in 1981, to bring vitality to the Marketplace District during the winter months. Further, the Church Street Marketplace uses the most up-to-date and energy efficient lighting strands and lights when decorating the Church Street for the Holidays (November/December) and for Winter Lights (February/April).

WHEREAS, the Department has conducted a competitive bid process, seeking fixed-cost proposals for a three year period for Holiday and Winter Lights on the Church Street Marketplace District, beginning Fall, 2013 through Spring, 2016.

WHEREAS, selection of proposals was based on three criteria: 1) experience of contractor with outdoor lighting. The successful bidder must possess 3 years of experience in the provision of landscaping, or decoration of downtowns and/or services similar in nature and scope of work outlined. The successful bidder must possess all licenses required to operate machinery; 2) contractor's equipment; 3) cost proposal

WHEREAS, Barrett's proposal was found superior for all three criteria. In addition, the company has been installing and removing lighting on the Church Street Marketplace since 2003. Barrett's has completed the Certification of Compliance with the City of Burlington Liveable Wage Ordinance and provided a certificate of liability insurance.

NOW, THEREFORE, BE IT RESOLVED, that the Burlington City Council authorizes the City of Burlington to execute a three-year agreement with Barrett's Tree Service for \$28,625 for Holiday Lights and Winter Lights.

**AGREEMENT BETWEEN  
CITY OF BURLINGTON & BARRETT'S TREE SERVICE, INC.  
FOR HOLIDAY AND WINTER LIGHTING SERVICES  
ON THE CHURCH STREET MARKETPLACE DISTRICT, 2013-2016**

THIS AGREEMENT is made this \_\_ day of \_\_\_\_\_, 2013, by and between the City of Burlington, VT, by and through the Church Street Marketplace Commission, hereinafter referred to as the CITY and BARRETT'S TREE SERVICE, Inc., a Vermont corporation with principal place of business located 376 Patchen Road, South Burlington, VT, 05403 (hereinafter referred to as CONTRACTOR).

WHEREAS, the CITY desires to have strands of garland and strands of LED lights installed on and then removed from the Church Street Marketplace District for the Holiday season (November – January) and strands of LED lights installed on and then removed from the Church Street Marketplace District for its Winter Light Walk (February – April) for a period of no less than three (3) years beginning 2013 and ending 2016; and

WHEREAS, the Church Street Marketplace District is defined as the four blocks of Church Street between Main and Pearl Street and as far into the three side streets as the Marketplace brick pavers extend; and

WHEREAS, City Charter Sec. 324 authorizes the CITY, through the Marketplace Commission, to contract for the installation and removal of garland and LED lights and other services; and

NOW, THEREFORE, the parties have agreed to the following terms and conditions of this Agreement:

**1. SCOPE OF WORK**

CONTRACTOR shall provide services as set forth in its response to the Request for Proposals from the Church Street Marketplace for Lighting on the Church Street Marketplace 2013-2016 services, which is attached hereto as Attachment A, and incorporated herein and made a part of this Agreement. Generally:

**(A) HOLIDAY LIGHTS**

- a. Contractor agrees to begin set-up in mid-October and be completed by mid-November in advance of the Christmas shopping season holiday lighting;
- b. Contractor agrees to provide labor and equipment to install lights in approximately 77 trees on the Church Street Marketplace District. Equipment used will include a 60' bucket truck, ladders, climbing saddles, rope, pole saws.
- c. Contractor agrees to the installation of garland, LED light strands and stars at each of four intersections: Main, College Bank and Cherry Streets.
- d. Contractor agrees to assist in the removal of Holiday Tree from a private home and to help secure the tree on the Church Street Marketplace and to the removal of the stump for the homeowner (dig and clean).
- e. Contractor agrees to decorate the Holiday Tree with approximately 25 cases of lights provided by the Marketplace Department.

- f. Contractor agrees to the removal of lights from the holiday tree after the season has concluded and removal of the holiday tree and its disposal.
- g. Contractor agrees to donate of up to 4 hours of repair work after the lighting ceremony.

(B) WINTER LIGHT WALK

- a. Contractor agrees to have lighting completed by the first Friday in February.
- b. Contractor agrees to install a canopy of lights in three of the intersections which are full four sided three dimension overheads with light strings being be 1 foot apart.
- c. Contractor agrees to install strings of light in a single two dimensional plane at the intersection of Church and Main Streets. The intersections at Bank and Cherry Streets will have light strands as well.
- d. Contractor agrees that Church Street Marketplace department staff will remove the winter lights from the intersections.

2. BEGINNING OF WORK AND TERMINATION

This Agreement shall be effective upon execution and shall be completed on or before: **May 1, 2016** unless terminated or extended in accordance herewith. Generally:

- (A) The CITY will pay the CONTRACTOR for services for three years (3) years, commencing on October 1, 2013 and terminating May 1, 2016 or sooner, as provided herein.
- (B) CONTRACTOR shall have the right, if in compliance with the terms and conditions set forth herein and not in default at the time of renewal, to renew this License Agreement for one additional term of three (3) years under the same terms.
- (C) Provided CONTRACTOR is not in default on any terms and conditions, CONTRACTOR shall have the option to extend the License Agreement for up to one (1) additional three-year terms, subject to all the terms and conditions of the License Agreement.
- (D) CONTRACTOR must notify the City of its intentions to exercise such option not less than 180 days or more than one year prior to the expiration of the license agreement.

3. THE AGREEMENT FEE

- A. General: The CITY agrees to pay CONTRACTOR and CONTRACTOR agrees to accept as full compensation for performance of all services and expenses payment at the rates specified under CONTRACTOR's scope of services in Attachment A.
- B. Maximum Limiting Amount The total amount to be paid to CONTRACTOR for all services each year of this Agreement **shall not exceed a maximum limiting amount of \$28,625.00** without *duly authorized* written approval.

4. PAYMENT PROCEDURES

Invoices shall be submitted to: Ron Redmond, Executive Director  
Church Street Marketplace  
City of Burlington

One original and one copy are required.

5. ATTACHMENTS

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

ATTACHMENT A: *Response REQUEST FOR PROPOSALS – Holiday and Winter Lighting for the Church Street Marketplace District October 2013-May- 2016 with CONTRACTOR’S Scope of Services, Work Plan & Costs, and other documents attached thereto.*

ATTACHMENT B: *Standard Contract Provisions*

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

**Barrett’s Tree Service, Inc.**  
376 Patchen Road  
South Burlington, VT, 05403

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

Title: \_\_\_\_\_

**City of Burlington, Vermont**  
Church Street Marketplace

By: \_\_\_\_\_  
Ron Redmond, Executive Director

Date \_\_\_\_\_

## **ATTACHMENT B -- Standard Contract Provisions**

### 1. INDEMNIFICATION

The Contractor will act in an independent capacity and not as officers or employees of the Municipality. The Contractor shall indemnify, defend and hold harmless the Municipality and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the Consultant's acts and/or omissions in the performance of this contract.

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

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

### 2. INSURANCE

**GENERAL:** Prior to beginning any work the Contractor shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the Municipality.

Evidence of compliance with minimum limits and coverages as demonstrated by a certificate of insurance showing policies and carriers that are acceptable to the Municipality must be received prior to the effective date of the Agreement. The insurance policies shall provide that insurance coverage cannot be canceled or revised without forty five (45) days prior notice to the Municipality.

In the event that this Contract extends to greater than one year, evidence of continuing coverage must be submitted to the Municipality on an annual basis. Certified copies of any insurance policies may be required. Each policy (with the exception of workers compensation) shall name the CITY as an additional insured for the possible liabilities resulting from the Contractor's actions or omissions. It is agreed that the liability insurance furnished by the Contractor is primary and non-contributory for all the additional insurers.

The Contractor is responsible to verify and confirm in writing the CITY that:

- (a) All subcontractors, agents or workers meet the minimum coverages and limits plus maintain current certificates of coverage for all subcontractors, agents or workers. Subcontractors must comply with the same insurance requirements as the Consultant.
- (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 Contractor for the Contractor's operations. These are solely minimums that have been developed and must be met to protect the interests of the Municipality.

**GENERAL LIABILITY AND PROPERTY DAMAGE:**

(a) With respect to all operations performed by the Contractor, subcontractor, agents or workers, it is the Contractor'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 form with limits not less than:

- |   |             |
|---|-------------|
| 1. General Aggregate:                       | \$2,000,000 |
| 2. Products-Completed/Operations Aggregate: | \$2,000,000 |
| 3. Personal & Advertising Injury:           | \$1,000,000 |
| 4. Each:                                    | \$1,000,000 |
| 5. Fire Damage (Any one fire):              | \$ 250,000  |
| 6. Med. Expense (Any one person):           | \$ 5,000    |

**WORKERS' COMPENSATION:** With respect to all operations performed, the Contractor shall carry workers compensation insurance in accordance with the laws of the State of Vermont and ensure that all subcontractors carry the same workers' compensation insurance for all work performed by them under this contract. Minimum limits for Employer's Liability:

1. Bodily Injury by Accident: \$500,000 each accident
2. Bodily Injury by Disease: \$500,000 policy limit, \$500,000 each employee

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

**UMBRELLA LIABILITY:**

1. Each Event Limit: \$1,000,000
2. General Aggregate Limit: \$1,000,000

3. COMPLIANCE WITH LAWS

**GENERAL COMPLIANCE WITH LAWS:** The Contractor shall comply with all applicable Federal, State and local laws, including but not limited to the Burlington Livable Wage Ordinance.

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 unenforceable or invalid, that provision shall be deemed severed from the Agreement, 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 or 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 Municipality 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, Municipality and to the USEPA Assistant Administrator for Enforcement (EN-329).

**CIVIL RIGHTS and EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Agreement, the Contractor 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 Contractor 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 Contractor certifies under the penalty of perjury as directed by Federal laws (48 CFR 52.209-5), that, except as noted in the Agreement, the Contractor or any person associated therewith in the capacity of owner, partner, director, 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 ineligible 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 judgment rendered against him/her by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Exceptions will not necessarily result in denial of the Contract but will be considered in determining the Contractor's responsibility. The Agreement shall indicate any exception and identify to whom or to what Municipality it applies and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

**LOBBYING:** For any Agreement exceeding one hundred thousand dollars, the Contractor 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 extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.

**CHILD SUPPORT PAYMENTS:** By signing the Contract the Contractor certifies, as of the date of signing the Agreement, that they are (a) not under an obligation to pay child support; or (b) is under such an obligation and is in good standing with respect to that obligation; or (c) has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan. If the Consultant is a sole proprietorship, the Consultant's statement applies only to the proprietor. If the Consultant is a partnership, the Consultant's statement applies to all general partners with a permanent residence in Vermont. If the Consultant is a corporation, this provision does not apply.

**TAX REQUIREMENTS:** By signing the Agreement, the Contractor 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 as of the date of signature on the Agreement.

**ENERGY CONSERVATION:** The Contractor 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.

#### 4. CONTRACTUAL AGREEMENTS

**REGISTRATION:** The Contractor agrees to maintain its registration with the Vermont Secretary of

State's office as a corporation doing business in the State of Vermont at all times this contract is effective. This registration must be complete prior to contract execution.

**ADMINISTRATION REQUIREMENTS:** By signing the Agreement the Contractor 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, if 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 Municipality, 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 a part of the work under the Agreement.
- (e) Publications. All data, EDM, valuable papers and documents produced under the terms of the Agreement, shall become the property of the Municipality. 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 Municipality.

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

Except with the approval of the Municipality, during the life of the Agreement, the Contractor shall not employ:

- (a) Personnel on the payroll of the Municipality 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 Municipality.

The Contractor warrants that no company or person has been employed or retained, other than a bonafide employee working solely for the Contractor, to solicit or secure this Agreement, and that no

company or person has been paid or has an agreement with the Contractor to be paid, other than a bonafide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the Municipality shall have the right to annul the Agreement, without liability to the Municipality, and to regain all costs incurred by the Municipality in the performance of the Agreement.

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

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

The services of the Contractor, to be performed under the Agreement, are personal and shall not be transferred without written authorization of the Municipality 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 Municipality.

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

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

**CONTINUING OBLIGATIONS:** The Contractor agrees that if, because of death or other occurrences it becomes impossible to effectively perform its services in compliance with the Agreement, neither the Contractor nor its surviving members shall be relieved of their obligations to complete the Agreement. However, the Municipality may terminate the Agreement if it considers a death or incapacity of any members to be a loss of such magnitude that it would affect the firm's ability to satisfactorily execute the Agreement.

**RECORDS RETENTION:** The Contractor 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 Municipality, unless otherwise notified by the Municipality. The Contractor further agrees that the Municipality, the State of Vermont, FHWA or other authorized representatives of the Federal Government, shall have access to all the above information for the purpose 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 Municipality if requested.

**APPEARANCES:**

- (a) Hearings and Conferences. The Contractor shall provide professional services required by the Municipality 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 Contractor shall perform any liaison that the Municipality deems necessary for the furtherance of the work and participate in conferences with the Municipality, at any reasonable time, concerning interpretation and evaluation of all aspects covered under the Agreement.

The Contractor further agrees to participate in meetings with the Municipality, 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 Contractor shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto in accordance with the Contract document.

- (b) Appearance as Witness. If and when required by the Municipality, a Contractor, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related Agreement, on behalf of the Municipality. The Contractor shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Contract document.

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

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

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

**SETTLEMENTS OF MISUNDERSTANDINGS:** In order to prevent misunderstandings and litigation, it is mutually agreed by all parties that the select board and/or city council shall act as referee on all questions arising under the terms of an Agreement and that the decision of this governing body in such cases shall be binding upon both parties.

Agreements subjecting costs to final audit, an administrative review regarding the audit will be sent to

the Contractor. 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 encompassed 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 two (2) years of the originally scheduled completion date, either party may by written notice request to amend or terminate the Agreement.

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

- (a) Breach of Contract. Administrative remedies - the Municipality reserves the right to terminate a Contract for breach of Contract agreements. Termination for breach of Contract will be without further compensation to the Contractor.
- (b) Termination for Cause. The Municipality reserves the right, upon written notice to the Contractor, to terminate the Agreement, as of a date to be specified by the Municipality, if the Contractor fails to complete the designated work to the satisfaction of the Municipality, within the time schedule agreed upon. The Contractor shall be compensated on the basis of the work performed and accepted by the Municipality at the date of final acceptance of the Agreement.
- (c) Termination for Convenience. In addition to its rights and options to terminate an Agreement as provided herein, the Municipality may, at any time prior to completion of services specified under an Agreement, terminate the Agreement by submitting written notice to a Contractor, 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 Municipality's convenience, payment to the Contractor will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made. However, if a notice of termination is given to a Contractor prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Contractor will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination, that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the Municipality's approval. The Contractor shall make no claim for additional compensation against the Municipality by reason of such termination.

## 5. OPERATIONAL STANDARDS

**RESPONSIBILITY FOR SUPERVISION:** The Contractor shall assume primary responsibility for general supervision of Contractor employees and his/her or their sub-contractors 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.

**INDEPENDENCE:** The Contractor shall act in an independent capacity and not as officers or employees of the Municipality.

**WORK SCHEDULE AND PROGRESS REPORT:** Prior to initiating any work, the Consultant shall prepare, and submit to the Municipality, 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 Municipality will use this general work schedule to monitor the consultant.

During the life of the Contract the Contractor will make monthly progress reports indicating the work achieved through the date of the report. The Contractor 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 Municipality may require the Contractor 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.

## 6. PAYMENT FOR SERVICES RENDERED

**PAYMENT PROCEDURES:** The Municipality shall pay, or cause to be paid to the Contractor or the Contractor's legal representative, progress payments, that may be monthly or as otherwise accepted by the Municipality, 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 the type of payment specified in the Agreement, the progress report shall summarize actual costs and any earned portion of fixed fee.

The Municipality agrees to pay the Contractor and the Contractor 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.

**PAYMENT FOR ADDITIONS OR DELETIONS:** The Municipality 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 Municipality may, upon written notice, and without invalidating the Agreement, require changes resulting from revision or abandonment of work already performed by the Contractor or changes in the scope of work.

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

- (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 Municipality, and no claim shall be valid unless so ordered.

The Contractor agrees to maintain complete and accurate records, in a form satisfactory to the Municipality for all time devoted directly to same by Contractor employees. The Municipality reserves the right to audit the records of the Contractor related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Agreement. When changes are so ordered, no additional work shall be performed by the Contractor until an Agreement amendment has been fully executed, unless written notice to proceed is issued by the Municipality. 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.

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