

## **ATTACHMENT B - BURLINGTON STANDARD CONTRACT CONDITIONS**

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:

AGC	Associated General Contractors of America
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
CES	Contractor Engineering Services
CFR	Code of Federal Regulations
EEO	Equal Employment Opportunity
FSS	Federal Specifications and Standards
IBC	International Building Code
IPC	International Plumbing Code
NEC	National Electrical Code
SIR	Self Insured Retention
USC	United States Code
USEPA	United States Environmental Protection Agency
VOSHA	Vermont Occupational Safety and Health Act
VSA	Vermont Statutes Annotated

### **1. INDEMNIFICATION:**

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

### **2. RELATIONSHIP:**

The parties agree that the CONTRACTOR is an independent CONTRACTOR. To that end, the CONTRACTOR shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. City shall provide the CONTRACTOR with no specific instructions or training in how to provide the required services, except to the extent required by law or regulation. The CONTRACTOR shall provide its own tools, materials or equipment. The parties agree that neither the CONTRACTOR nor its Principal is an employee of City or any of its departments, agencies, or related entities. The parties also agree that neither the CONTRACTOR nor its Principal is entitled to any employee benefits from City. CONTRACTOR understands and agrees that it and its Principal have no right to claim any benefits under the Burlington Employee Retirement System, City's worker's compensation benefits, health insurance, dental insurance, life insurance or any other employee benefit plan offered by City. The CONTRACTOR agrees to execute any certifications or other documents and provide any certificates of insurance

required by City and understands that this contract is conditioned on its doing so, if requested.

The CONTRACTOR understands and agrees that it is responsible for the payment of all taxes on the above sums and that City will not withhold or pay for Social Security, Medicare, or other taxes or benefits or be responsible for any unemployment benefits.

**3. INSURANCE:**

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](http://www.ambest.com)). The certificate of insurance coverage shall be documented on forms acceptable to the CITY. Evidence of compliance with minimum limits and coverage, 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 policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the CITY. In the event that this Contract extends to greater than one year, evidence of continuing coverage must be submitted to the CITY on an annual basis. Certified copies of any insurance policies may be required. Each policy (with the exception of professional liability and 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 insured.

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

(a) All SUB-CONTRACTORS, agents or workers meet the minimum coverage and limits plus maintain current certificates of coverage for all SUB-CONTRACTORS, agents or workers. SUB-CONTRACTORS must comply with the same insurance requirements as the CONTRACTOR.

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

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

No warranty is made that the coverage 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 CITY.

*GENERAL LIABILITY AND PROPERTY DAMAGE:*

With respect to all operations performed by the CONTRACTOR, SUB-CONTRACTORS, agents or workers, it is the CONTRACTOR's responsibility to insure that general liability insurance coverage, on an occurrence form, provides all major divisions of coverage including, but not limited to and with limits not less than:

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

1. General Aggregate	\$2,000,000
2. Products-Completed/Operations	\$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	\$ 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 SUB-CONTRACTORS and SUBCONTRACTORS carry the same workers' compensation insurance for all work performed by them under this contract. Minimum limits for Employer's Liability:

- (a) Bodily Injury by Accident: \$500,000 each accident
- (b) Bodily Injury by Disease: \$500,000 policy limit, \$500,000 each employee

**PROFESSIONAL LIABILITY INSURANCE:**

- (a) General. N/A
- (b) Deductibles. The CONSULTANT is responsible for any and all deductibles.
- (c) Coverage. Prior to performing any work, the CONSULTANT agrees to provide evidence of E&O insurance coverage defined under this Section. In addition, the CONSULTANT 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, if such coverage is reasonably available at commercially affordable premiums.

**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:**

\$1,000,000 Each Event Limit

\$1,000,000 General Aggregate Limit

## **COMPLIANCE WITH LAWS**

### **4. 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, the Non-Outsourcing Ordinance and the Union-Deterrence Ordinance and shall provide the required certifications attesting to compliance with these ordinances (see attached ordinances and certifications).

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.

### **5. 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, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status or genetic information.

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 CONTRACTOR 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 CONTRACTOR 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.

### **6. 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 CONTRACTOR is a sole proprietorship, the CONTRACTOR's statement applies only to the proprietor. If the CONTRACTOR is a partnership, the CONTRACTOR's statement applies to all general partners with a permanent residence in Vermont. If the CONTRACTOR is a corporation, this provision does not apply.

7. **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

### **CONTRACTUAL AGREEMENTS**

8. **REGISTRATION:** The CONTRACTOR agrees to be registered with the Vermont Secretary of State's office as a business entity doing business in the State of Vermont at all times this contract is effective. This registration must be complete prior to contract execution.
9. **PERSONNEL REQUIREMENTS AND CONDITIONS:** A CONTRACTOR shall employ only qualified personnel, for responsible authority to supervise 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 CONTRACTOR 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 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 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 CONTRACTOR, 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 the requirements of the Agreement.

10. **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 CITY and further, if any SUB-CONTRACTOR 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 CONTRACTOR of responsibility for the performance of that portion of the work so transferred. The form of the SUB-CONTRACTOR's agreement shall be as developed by the CONTRACTOR and approved by the CITY. The CONTRACTOR shall ensure that insurance coverage exists for any operations to be performed by any SUB-CONTRACTOR as specified in the insurance requirements section of this agreement.

The services of the CONTRACTOR, to be performed under the Agreement, are personal and shall not be transferred without written authorization of the CITY. Any authorized sub agreements shall contain all of the same provisions for and attached to the original agreement with the CITY.

11. **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 CITY 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.
12. **OWNERSHIP OF THE WORK:** The CONTRACTOR 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 CONTRACTORS, hereafter referred to as "instruments of professional service", shall become the property of the CITY as they are prepared and/or developed during execution of the Agreement. The CONTRACTOR agrees to allow access to all "instruments of professional service" at any time. The CONTRACTOR shall not copyright any material originating under the Agreement without prior 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 CONTRACTORS may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.
13. **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 CONTRACTOR. The CONTRACTOR, 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 a part of the work under the Agreement.

#### **14. PUBLIC RECORDS**

Any and all records submitted to the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be handled is solely within the purview of City. All records considered to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, shall be identified, as shall all other records considered to be exempt under the Act. It is not sufficient to merely state generally that the proposal is proprietary or a trade secret or is otherwise exempt. Particular records, pages or section which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

#### **15. RECORDS RETENTION**

The CONTRACTOR agrees to retain, in its files, and to produce to City within the time periods requested, all books, documents, EDM, accounting records, and other evidence related to City, at any time during this Agreement and for a period of at least three (3) years after its termination. The CONTRACTOR further agrees that the CITY shall have access to all the above information for the purpose of reviewing and audit during the Agreement period and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the CITY if requested. CONTRACTOR, SUB-CONTRACTORS, or any representatives performing work related to the Agreement, are responsible to insure 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.

#### **16. APPEARANCES:**

(a) Hearings and Conferences. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR further agrees to participate in meetings with the CITY 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 CITY, a CONTRACTOR, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related Agreement, on behalf of the CITY. The CONTRACTOR shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Contract document.

17. **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 CONTRACTOR.
18. **APPENDICES:** The CITY 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 CITY as occasions may require. It is the responsibility of the CONTRACTOR to ensure that they have the latest versions applicable to the Agreement.
19. **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 CITY 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 CONTRACTOR.
20. **SETTLEMENTS OF MISUNDERSTANDINGS:** In order to prevent misunderstandings and litigation, it is mutually agreed by all parties that all questions arising under the terms of an Agreement will first be evaluated by the Local Project Manager. Should a claim be denied in whole or in part by the Local Project Manager the CONTRACTOR may appeal to the Director of Public Works, except that for claims involving payments, appeals shall be made to the Director of Public Works and the Chief Administrative Officer.

A CONTRACTOR may appeal any determination regarding the contract by filing a notice of appeal by hand delivery or courier to the Local Project Manager. The notice of appeal shall specifically state the grounds of the protest. Within seven



(7) calendar days of the notice of appeal the CONTRACTOR must file the Municipality a detailed statement of the grounds, legal authorities and facts, including all documents and evidentiary statements, in support of the appeal. Evidentiary statements, if any, shall be submitted under penalty of perjury. The CONTRACTOR shall have the burden of proving its appeal by the preponderance of the evidence. Failure to file a notice of appeal or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to appeal the evaluation or qualified process and decisions thereunder.

**21. 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.

**22. CITY'S OPTION TO TERMINATE:** The Agreement may be terminated in accordance with the following provisions, which are not exclusive:

- (a) Breach of Contract. Administrative remedies - the CITY 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 CITY reserves the right, upon written notice to the CONTRACTOR, to terminate the Agreement, as of a date to be specified by the CITY, if the CONTRACTOR fails to complete the designated work to the satisfaction of the CITY, within the time schedule agreed upon. The CONTRACTOR shall be compensated on the basis of the work performed and accepted by the CITY 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 CITY 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 CITY'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 CITY's approval. The CONTRACTOR shall make no claim for additional compensation against the CITY by reason of such termination.

**23. ACKNOWLEDGEMENTS**

Acknowledgment of the City of Burlington's support must be included in any and all publications, renderings and project publicity, including audio/visual materials developed under this contract.

**24. WAIVER**

No waiver by City of any breach of or cause to terminate this Agreement by the Contractor shall constitute a waiver of any subsequent breach by the Contractor, and no delay in enforcement of any breach or such cause shall be deemed a waiver of that breach or cause.

**OPERATIONAL STANDARDS**

**25. RESPONSIBILITY FOR SUPERVISION:** The CONTRACTOR shall assume primary responsibility for general supervision of CONTRACTOR employees and his/her or their SUBCONTRACTORS 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.

**26. INDEPENDENCE:** The CONTRACTOR shall act in an independent capacity and not as officers or employees of the CITY.

**27. UTILITIES:** Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the CONTRACTOR 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 CONTRACTOR shall inform the CITY, in writing, of any such contacts and the results thereof.

**28. PUBLIC RELATIONS:** Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the CONTRACTOR will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the CONTRACTOR shall conduct themselves with propriety. The CONTRACTOR 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 CONTRACTOR

agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the CONTRACTOR, the CITY shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the CONTRACTOR is acting as an agent of the CITY.

**29. INSPECTION OF WORK:**

The CITY shall, at all times, have access to the CONTRACTOR's work for the purposes of inspection, accounting, and auditing, and the CONTRACTOR shall provide whatever access is considered necessary to accomplish such inspections. At any time, the CONTRACTOR 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 CONTRACTOR 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.

- 30. RETURN OF MATERIALS.** CONTRACTOR agrees that at the termination of this Agreement, it shall return to City all materials provided to it during its engagement on behalf of City.

**PROJECT DEVELOPMENT AND STANDARDS**

**31. PLANS RECORDS AND AVAILABLE DATA:**

The CITY agrees to make available, at no charge, for the CONTRACTOR's use all available 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.

- 32. DESIGN STANDARDS:** Unless otherwise specifically provided for in the Agreement, or directed in writing, CONTRACTOR 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) 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 CONTRACTOR is responsible to identify and follow any course of direction provided by the CITY.

- 33. REVIEWS AND ACCEPTANCES:** All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the CONTRACTOR, 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 CONTRACTOR shall respond to all official comments regardless of their source. The CONTRACTOR shall supply the CITY with written copies of all correspondence relating to formal and informal reviews.

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

#### **34. BINDING NATURE AND JURISDICTION**

This agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors or heirs and representatives, and assigns. This agreement shall be governed by Vermont law, and the CONTRACTOR expressly agrees to submit to the jurisdiction of the courts of the State of Vermont.

#### **PAYMENT FOR SERVICES RENDERED:**

- 35. PAYMENT PROCEDURES:** The CITY shall pay, or cause to be paid to the CONTRACTOR or the CONTRACTOR's legal representative, payments in accordance with 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.

All invoices and correspondence shall indicate the applicable project name, project number and the Agreement number. When relevant, 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.

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 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 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.

36. **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 Agreement. 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.

37. **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 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 CITY, and no claim shall be valid unless so ordered.

The CONTRACTOR agrees to maintain complete and accurate records, in a form satisfactory to the CITY for all time devoted directly to same by CONTRACTOR employees. The CITY 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 CITY. Any claim for extension of time, which 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.