

City of Burlington
Department of Public Works
Water Resources Division
235 Penny Lane
Burlington, VT 05401



Chapin Spencer
Public Works Director

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Asst. Director of Water Resources

REQUEST FOR QUALIFICATIONS Stormwater Engineering & Design Assistance

Date of Issuance: May 23, 2018

Issued by: City of Burlington Department of Public Works – Water Resources

Due Date for Questions: June 7, 2018

Statement of Qualifications Due: June 25, 2018

Issuing Point of Contact: Jenna Olson, Stormwater Program Manager
235 Penny Lane
Burlington, VT 05401
jolson@burlingtonvt.gov
(802) 557-5440

Answers to Questions and Revisions to Request for Qualifications

Any revisions, addendums and answers to questions received by the due date for questions will be posted on the City's RFP web page <http://burlingtonvt.gov/RFP/> by June 14, 2018.

SECTION 1: INTRODUCTION

The City of Burlington is seeking to procure a stormwater/wet weather consulting engineer to provide regular on-call services for planning, design, and engineering tasks associated with projects for the Water Resources Division Stormwater Program through a rate schedule retainer contract based on the firm's hourly rates.

The selected engineer will be used on an as-needed basis to supplement and support City staff, by providing services in the area of stormwater/wet-weather management design and implementation. The selected engineer will sign a rate schedule retainer contract for the term of FY19-FY20, which runs from July 1, 2018 through June 30, 2020 and which may be eligible for renewal for FY 21. The total amount paid out under this contract for FY19 is estimated to be between \$55,000 to \$145,000. Future years will be dependent on the success of this program in FY19 and the FY20 budget.

In addition to being qualified in the field of stormwater/wet-weather management, successful candidates must be familiar with and able to comply with all relevant City of Burlington Ordinances, as well as Vermont and federal environmental laws and regulations.

SECTION 2: PROGRAM DESCRIPTION

The Stormwater Technical Assistance Program for FY19-FY20 is intended to provide a flexible and efficient way for the Stormwater Program to advance the design of projects that are currently in the conceptual phase, as well as to queue up new projects as necessary as part of the City's coordinated infrastructure approach. The services provided will allow the Stormwater Program to develop a list of "shovel ready" projects. Additionally, the consultant will assist the Stormwater Program with longer range capital planning.

The consultant and the Stormwater Program Manager will develop an initial work-plan that will specify specific deliverables and deadlines for the first round of projects, however there may be additional "emergency" projects. The consulting engineer would be expected to have regular weekly progress meetings with the Stormwater Program Manager to review the progress of the workplan and to amend the workplan as necessary to leverage the resources and contract authorization of the consulting engineer.

The Stormwater Program would prefer to work directly with an individual who is capable of both project management (deciding when other resources are necessary and how to access those resources) as well as meeting more of the day to day technical needs. Depending on the size of a particular project that the Stormwater Program and consulting engineer are pursuing, it is likely and possible that the Stormwater Consulting Engineer may bring in other members of their firm's team or, in some cases, develop an RFP to procure additional firms for specialized work.

In the end, the goal of this technical assistant program is to act as an **engineering and technical services force multiplier** for the Stormwater Program within Water Resources.

SECTION 3: REQUESTED AREAS OF EXPERTISE

Required:

- Stormwater / Wet Weather Management
 - Engineering services
 - Developing basis of design
 - Preparation of preliminary engineering drawings
 - Preparation of final engineering construction drawings
 - Preparation of bid documents
 - Resident engineering/construction oversight
 - Urban Retrofit Planning & Design
 - Expertise in siting, evaluating the feasibility of and designing Green Stormwater Infrastructure (GSI) elements in an urban closed drainage

environment, including:

- Pervious pavement systems
- Bioretention practices
- Tank storage / cisterns
- Subsurface storage / infiltration systems
- Green roofs
- Urban conventional stormwater planning / design
 - Drainage improvements / collection system design
 - Outfall Assessment and Repair
- CSO Abatement
- Urban Hydraulic/Hydrologic Modeling

Preferred:

- Asset Management Principles/ Risk Based Prioritization
- Landscape Architecture
 - Planting plans for GSI practices
 - Soil media specification and sourcing for bioretention practices
- Geotechnical Engineering & Design
 - Erosion issues related to stormwater runoff and groundwater migration
 - Channel design
 - Bioengineering of slopes, shorelines, and channels

Examples of work to be completed:

- **Site assessment, feasibility analysis, and design of green infrastructure retrofit opportunities in areas scheduled for paving within the next 2-3 fiscal years**
- **Engineering, design, and preparation of bid documents for construction of green infrastructure retrofits in the City right-of-way and/or private property**
- **Design and construction engineering of outfall repairs**
- **Engineering Feasibility Analyses related to the City's "3-Acre" sites**

Availability:

Applicants must be available to complete requests under this contract in a reasonable time frame. At a minimum, applicants should be willing and able to begin work on a project under this contract within no more than two weeks of the City's initial request. Applicants should also be aware that in some cases, a shorter lead time may be necessary.

SECTION 4: REQUIRED SUBMISSION MATERIALS

All applicants are required to submit a Statement of Qualifications (SOQ) and a Rate and Fee Schedule as part of their submission. In order to be considered responsive to this RFQ and be considered for ranking based on the scoring criteria, each submittal must conform to the following requirements. The applicant shall:

- Submit three (3) hardcopies and one (1) electronic copy (on a CD or other digital media) of the Statement of Qualifications (see requirements below); number all pages consecutively, not exceeding 20 double sided 8.5x11" pages, excluding project descriptions and resumes.
- Submit one (1) hard copy and one (1) electronic copy of the Schedule of Rates (see requirements below) in a sealed, separate package.

Clearly indicate the following on the outside of each package:

1. Project Name
2. Contents (Statement of Qualifications or Rate/Fee Schedule)
3. Name and address of the primary engineer

Submissions must be received by 2:00 p.m. on June 25, 2018, at:

Water Resources Division
Department of Public Works – Water Treatment Plant
ATTN: Jenna Olson
235 Penny Lane
Burlington, VT 05401

Late submissions will not be accepted, nor will submissions to locations other than the above. If any of the above requirements are not met, the proposal may be rejected.

All Statements of Qualification will become the property of the City of Burlington upon submission. The City of Burlington retains the right to reject any and all SOQs received as a result of this solicitation, to waive any formality and any technicality, to negotiate with any qualified source, or to cancel in part or in its entirety this RFQ as in the best interest of the project. The Municipality assumes no responsibility and liability for costs incurred by parties responding to this RFQ or responding to any further requests for interviews, additional data, etc., prior to the issuance of the contract. The cost of preparing, submitting and presenting is the sole expense of the submitting entity. The Municipality reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals. This RFQ in no way obligates the Municipality to award a contract. While unlikely, the City reserves the right to hire more than one consultant for the Current Scope of Work if it is in the best interests of the City.

Statement of Qualifications Requirements

The SOQ should demonstrate that the applicant understands the intent and scope of the program, the character of the deliverable(s), the services required for their delivery, and the

specific tasks that must be performed in the course of supplying these services. In addition, the qualifications of the applicant to supply the required services must be demonstrated.

Submissions may include multiple members of individual firms, however as a reminder Water Resources is ideally looking for an individual vs. a broad team. Proposers will be evaluated on technical expertise and past performance. To assist with the evaluation, please provide the following information:

1. Cover Letter

This section should provide a brief introduction along with an overview of the applicant's understanding of the nature of the work and general approach to be taken.

2. Introduction to the engineer or engineering team

Proposers shall provide the following information relative to their firm. Similar information must be provided for each member of a joint venture:

- Firm name and business address, including telephone number and email contact.
- Year established, including former firm names and year established, if applicable. Identify the state in which the firm was organized and incorporated.
- Type of ownership, and name and location of parent company and subsidiaries, if any, and indication of whether the firm is licensed to do business in the State of Vermont, which is a requirement of this program.
- Number of full-time employees. Part-time employees or consultants routinely engaged by the proposer may be included if clearly indicated as such.
- A description of the specific expertise, skills, and services the firm offers.
- Relevant project listing (this listing may be included as an Appendix, and does not count toward the 20-page limit.)

3. Qualifications and Experience of Key Staff

Consultants shall identify the primary individual assigned to do work under this contract and any individuals that might provide supporting services and include the function and/or responsibility of each of the identified individuals. Experience summaries of these individuals shall be provided, with emphasis on previous experience in similar contracts or projects in which the firm is seeking prequalification.

4. Organization

This section should discuss the firm's project management structure and relate to the job categories listed in the Cost Proposal to generalized project tasks.

5. Local Ordinance Compliance & Insurance Requirements

Respondents shall confirm that they will meet all local ordinance compliance and insurance requirements (see Section 7) upon selection.

6. References

Applicants shall submit at least three references familiar with the applicant's ability,

experience, and reliability in the performance and management of projects. Please provide the following information for each reference:

- Firm name (if applicable)
- Contact person
- Address, phone number, and email address for contact person
- Year of project
- Description of project

Rate and Fee Schedule Requirements

The cost proposal should present a table including hourly and overtime rates (as applicable) for all classification of personnel who may be utilized under this contract. These rates shall be presented and broken down by direct labor costs per class of labor, overhead cost, and profit. This cost proposal information shall be placed in a separate envelope and the contents clearly labeled as specified above. The cost proposal should also include the firm’s standard rates for any printed or other materials likely to be produced as part of scopes of work. The rates presented by the proposal will remain in effect for the duration of the 2 contract. If the contract is renewed for FY21, rates may be updated.

SECTION 5: EVALUATION & SELECTION

The City will assemble a selection committee (minimum of 3 City staff members) that will evaluate and rank the SOQs based on the evaluation criteria and weighting below:

Review Criteria	Weight	Maximum Points	Weighted Points
Qualifications of the firm & personnel (including any subcontractors)	9	5	45
Clarity of the proposal, skills available, and expertise with specific skills	6	5	30
Demonstration of the overall project understanding and knowledge of the Burlington area	4	5	20
Completeness of submitted proposal with all elements required by the RFQ	1	5	5
TOTAL			100

Following the technical qualifications evaluation, the cost proposal will be next reviewed for consistency and in light of the evaluation of the technical qualifications. Cost proposals may be used to provide the final selection of a consultant. The award will be made that is in the best interest of the City, notwithstanding the weighting given to proposals.

Follow-up Interviews

If deemed necessary, a short list of qualified applicants may be selected for follow-up interviews. Interviews will be conducted by the staff committee. Each applicant will be permitted approximately 15 minutes to make an oral presentation with a question and answer session to follow, not to exceed 15 minutes. Interviews, if requested, will take place at the Burlington Water Treatment Facility, or at a site designated by the Water Resources Division.

SECTION 6: ADDITIONAL INFORMATION

All proposers should familiarize themselves with and be ready to execute an Agreement substantially similar to that in Appendix B. Proposers should review the Burlington specific requirements in Attachment B: Special Conditions of that Appendix. The City of Burlington reserves the right to alter or amend any or all provisions in the project contract.

It is expected that all consultants will make good faith efforts to solicit DBE sub-consultants. In particular, consultants should familiarize themselves with the contract provisions regarding the following items.

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 Contractor'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.

Ownership of Documents

Proposals, plans, specifications, basis of designs, electronic data, designs and reports prepared under this RFP and any subsequent agreement between the selected contractor or consultant and the city shall become the property of the City. Records shall be furnished to the City by the Contractor upon request at any time; the Contractor or Consultant may retain copies of the original documents.

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.

Non-Discrimination

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status or genetic information.

Equal Opportunity

The selection of consultants shall be made without regard to race, color, sex, sexual orientation, gender expression, age, religion, national origin or political affiliation. The City of Burlington is an Equal Opportunity Employer and encourages proposals from qualified minority and woman-owned businesses.

Insurance Requirements:

All proposers should familiarize themselves with and be prepared to sign an agreement containing requirements related to the standard insurance requirements for City projects attached in Appendix B.

Notice of Non-Appropriation

Proposers are hereby given notice that an agreement entered into pursuant to an award under this request for qualifications is intended to be a multi-fiscal year agreement under which the obligations of the City to make payments shall be a current expense of the City in the fiscal year the expense is to be paid and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional, statutory limitation or requirement, or the City's charter. Nothing contained in a contract shall constitute a pledge of the credit or tax revenues, funds or monies of the City. The decision whether or not to budget and appropriate funds during each fiscal year of the City is and shall be within the discretion of the governing body of the City and the obligations of the City under the contract are subject to annual appropriations by the governing body of the City. An act of non-appropriation shall act to terminate a contract under the terms of the agreement.

Local Ordinance Compliance:

All proposers should familiarize themselves with and be prepared to sign an agreement containing requirements related to the City Ordinances listed below and listed in the Draft Agreement in Appendix B.

- **LIVABLE WAGE ORDINANCE:** In the event a work assignment exceeds \$15,000, or when combined with other contracts within the last 12 months exceeds \$15,000, the consultant will be required to comply with the Burlington Livable Wage Ordinance and shall provide the required certification attesting to compliance with the ordinance.
- **OUTSOURCING ORDINANCE:** In the event that contract amounts exceed \$50,000, consultants will be required to comply with the Burlington Non-Outsourcing Ordinance and shall provide the required certification attesting to compliance with this ordinance

as a condition of executing the contract.

- **UNION DETERRENCE ORDINANCE:** In the event that contract amounts exceed \$15,000, consultants will be required to comply with the Burlington Union Deterrence Ordinance and shall provide the required certification attesting to compliance with this ordinance as a condition of executing the contract.

Other Conditions

The City of Burlington reserves the right to seek clarification of any proposal submitted and to select the proposal considered to best promote the public interest.

The cost of preparing, submitting and presenting a proposal is the sole expense of the consultant. The City reserves the right to reject any and all proposals received as a result of this solicitation, to re-advertise the project, to negotiate with any qualified source, to waive any formality and any technicalities or to cancel the RFP in part or in its entirety if it is in the best interest of the City. This solicitation of proposals in no way obligates the City to award a contract.

The consultant must be prepared to sign a contract containing, among other things, conditions related to indemnification, insurance requirements and compliance with various City ordinances including Livable Wage, Union Deterrence and Outsourcing.

It is expected that all consultants will make good faith efforts to solicit DBE sub-consultants.

DRAFT AGREEMENT

**CITY OF BURLINGTON, VERMONT
CONTRACT AGREEMENT
FOR ENGINEERING SERVICES**

CONTRACTOR CONTRACT ATTACHMENT:

Specifications for Contractor Services

Includes:

- 1. ABBREVIATIONS AND DEFINITIONS**
- 2. INDEMNIFICATION**
- 3. INSURANCE**
- 4. COMPLIANCE WITH LAWS**
- 5. CONTRACTUAL AGREEMENTS**
- 6. OPERATIONAL STANDARDS**
- 7. PROJECT DEVELOPMENT AND STANDARDS**
- 8. PAYMENT FOR SERVICES RENDERED**
- 9. AUDIT REQUIREMENTS**
- 10. SECRETARY OF STATE**

Section 1: ABBREVIATIONS AND DEFINITIONS

Wherever used in these Specifications for Contractor Services or in any documents that these specifications pertain to or govern; 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:

1.01 ABBREVIATIONS.

CADD	Computer Aided Drafting and Design
CFR	Code of Federal Regulations
CPM	Critical Path Method
CSC	Contractor Selection Committee
DBE	Disadvantaged Business Enterprise
EDM	Electronic Data Media
FTP	File Transfer Protocol
LOI	Letter of Interest
RFP	Request for Proposals
SOW	Scope of Work
U.S.C.	United States Code
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
VOSHA	Vermont Occupational Safety and Health Administration
V.S.A.	Vermont Statutes Annotated
VTrans (VAOT)	Vermont Agency of Transportation

1.02 DEFINITIONS. Wherever in these specifications or in other contract documents the following terms or pronouns in place of these are used, the intent and meaning shall be interpreted as follows, unless that context makes clear that another meaning is intended:

ACCEPTANCE: (Reviews-Acceptances) The Municipality's determination that a deliverable meets the requirements of the contract. The Municipality's determination shall prevail in the interpretation of acceptability.

ACCEPTANCE DATE: The date of the written notice to the contractor by the Project Manager that the project is complete and final payments, if applicable, have been approved as provided by the contract.

AGENCY: State of Vermont, Agency of Transportation, also referred to as VAOT or VTrans.

AGREEMENT: See CONTRACT.

AMENDMENT: A change to a contract that has been reviewed and approved, by signed

document, by all parties to the contract.

AUDIT: An examination of the financial accounting and record systems of an entity in accordance with Generally Accepted Governmental Auditing Standards (yellow book), applicable accounting principles, and contract terms.

CALENDAR DAY: A day as shown and sequenced on the calendar, beginning and ending at midnight, as differentiated from work days or other intermittent time references.

COMPETITIVE NEGOTIATION: A means of procurement involving negotiations, based on qualifications, as described in Title IX of Federal Property and Administrative Services Act of 1949, or the formal procedure permitted by Title 19 V.S.A. Section 10a. Any competitively procured contract awarded without using a sealed bid process is considered a negotiated contract.

CONTRACT: A written contract between the Municipality and another legally distinct entity for the provision of service(s) and/or product(s). The term contract includes all such contracts whether or not characterized as a “contract”, “agreement”, “miscellaneous contract”, “letter of agreement”, “amendment” or other similar term.

CONTRACTOR: An individual or legally distinct entity providing contractual services and/or products directly to the Municipality.

DIRECTOR: A Division manager within the Agency who reports directly to Vermont’s Secretary of Transportation.

DIVISION: A major component of the Agency, headed by a member of the Agency’s executive staff. Each Division is subdivided into Sections and Units.

ENGINEERING AND DESIGN RELATED SERVICES: Means program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a construction project.

EXTRA WORK OR ADDITIONAL SERVICES: Services determined to be required that are not specified in a contract.

FIXED FEE: A specific amount of money to be paid in addition to the hourly or other rates for the work performed pursuant to a contract which is determined by taking into account the size, complexity, duration, and degree of risk involved in the work. Overruns in the work and/or the duration of the work shall not warrant an increase in the fixed fee.

OVERTIME PREMIUM RATE: Time and one-half or some other multiple for hours worked in excess of 40 hours in a workweek or for hours worked on weekends, holidays, and other times when work is not generally performed.

PROGRESS PAYMENTS: Partial payments made for services performed under the contract as the work progresses, at intervals and within limitations designated in the contract.

PROGRESS REPORT: A comprehensive narrative, graphic and/or tabular document/report, whether in hard copy or electronic format, indicating actual work accomplished by the contractor.

PROJECT: All activities performed and expenditures made to accomplish a specific goal. A contract may encompass part of, or more than, one project.

PROJECT MANAGER (LOCAL PROJECT MANAGER): A Municipal representative responsible for administrative management of a project and coordination of all activities related to the project, including the contract(s) to accomplish the goals of the project.

SCOPE OF WORK: A detailed description of all services and actions required of a contractor in a contract.

STATE: The State of Vermont as represented through and by the Vermont Agency of Transportation.

SUBCONTRACTOR: An individual or legally distinct entity to whom or which the contractor sublets part of the work.

VALUABLE PAPERS: Material bearing written or printed information of importance, utility or service relating to a project or contract. Electronic information is also included.

WORK: The furnishing of all labor, materials, equipment, and/or incidentals necessary or convenient to the successful completion of the contract and carrying out of the duties and obligations imposed by the contract.

Section 2: INDEMNIFICATION

2.01 INDEPENDENCE, LIABILITY.

The Consultant will act in an independent capacity and not as officers or employees of the Municipality. The Consultant 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 "non-professional services" under this contract. As used herein, "non-professional services" means services provided under this Agreement other than professional services relating to the design and/or engineering of all or part of the project. The Municipality shall notify the Consultant in the event of any such claim or suit covered by this Subsection and the Consultant shall immediately retain counsel and otherwise provide a complete defense against the entire

claim or suit arising out of “non-professional services” provided under this Agreement. The Consultant shall indemnify the Municipality and its officers and employees in the event that the Municipality, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Consultant arising from the provision of “non-professional services” (as defined herein) under this Agreement.

The Consultant shall indemnify 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 “professional services” under this contract. The Consultant shall not be obligated to defend the Municipality and its officers and employees against claims or suits arising from the Party’s provision of engineering design services or architectural design services. The Consultant shall be obligated to indemnify and hold the Municipality, its officers and employees, harmless from and against monetary damages to third parties, together with reasonable costs, expenses and attorney’s fees incurred and paid by the Municipality in defending claims by third parties (collectively “Damages”) but only in the event and to the extent such Damages are incurred and paid by the Municipality as the proximate cause of negligent acts, errors or omissions (“Professional Negligence”) by the Consultant, its employees, agents, consultants and subcontractors, in providing the professional services required under this Agreement. As used herein, “Professional Negligence” or “negligent acts, errors or omissions” means a failure by the Consultant to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or similar conditions and circumstances.

After a final judgment or settlement the Consultant may request recoupment of specific defense costs and may file suit in Vermont Superior Court, Chittenden Unit, Civil Division, requesting recoupment. The Consultant shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Consultant.

The Municipality is responsible for its own actions. The Consultant 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 Consultant in writing that a claim to which the Indemnification Agreement may apply has been filed.

Section 3: INSURANCE

3.01 GENERAL. Prior to beginning any work pursuant to a contract, the Contractor shall have the required insurance coverages in place. The certificate(s) of insurance coverage shall be documented on forms acceptable to the Municipality. Compliance with minimum limits and

coverages, evidenced 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 contract. The insurance policy(ies) shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the Municipality. If the contract is for a period 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 shall name the Municipality and the State of Vermont as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.

The contractor shall:

- (a) Verify that all subcontractors, agents or workers meet the minimum coverages and limits;
- (b) Maintain current certificates of coverage for all subcontractors, agents and/or workers;
- (c) Where appropriate, verify that all coverages include protection for activities involving hazardous materials; and
- (d) Verify that all work activities related to the contract are covered with at least the following minimum coverages and limits.

3.02 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.

3.03 GENERAL LIABILITY AND PROPERTY DAMAGE. (See Special Conditions) ~~With respect to all operations~~

~~performed under the contract, the Contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:~~

~~Premises—Operations~~

~~Products and Completed Operations~~

~~Personal Injury Liability~~

~~Contractual Liability~~

~~The policy shall be on an occurrence form and limits shall not be less than:~~

~~\$1,000,000 Per Occurrence~~

~~\$1,000,000 General Aggregate~~

~~\$1,000,000 Products/Completed Operations Aggregate~~

~~\$ 50,000 Fire/ Legal/Liability~~

~~The Contractor shall name the Municipality and State of Vermont, and their officers and~~

~~employees, as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.~~

3.04 AUTOMOTIVE LIABILITY. The Contractor shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

The Contractor shall name the Municipality and State of Vermont, and their officers and employees, as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.

No warranty is made that the coverages and limits required are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that must be met to protect the interests of the Municipality.

3.05 VALUABLE PAPERS AND RECORDS INSURANCE. The contractor shall carry valuable papers insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other information or data relating to the work, whether supplied by the Municipality or developed by the contractor, subcontractor, worker or agent, in the event of loss, impairment or destruction. Such coverage shall remain in force until the final plans as well as all related materials have been delivered by the contractor to, and accepted by, the Municipality.

Unless otherwise provided, Valuable Papers and Records Insurance shall provide coverage on an "individual occurrence" basis with limits in the amount of one hundred and fifty thousand dollars (\$150,000) when the insured items are in the contractor's possession, and in the amount of forty thousand dollars (\$40,000) regardless of the physical location of the insured items.

~~**3.06 RAILROAD PROTECTIVE LIABILITY.** When the contract requires work on, over or under the right of way of any railroad, the contractor shall provide and file with the Municipality, with respect to the operations that it or its subcontractor perform under the contract, Railroad Protective Liability Insurance for and on behalf of the railroad as named insured, with the Municipality and State of Vermont named as additional insured, providing for coverage limits of:~~

- ~~(a) not less than two million dollars (\$2,000,000) for all damages arising out of any one accident or occurrence, in connection with bodily injury or death and/or injury to or destruction of property; and~~
- ~~(b) subject to that limit per accident, a total (or aggregate) limit of six million dollars (\$6,000,000) for all injuries to persons or property during the policy period.~~

~~If such insurance is required, the contractor shall provide a certificate of insurance showing the minimum coverage indicated above to the Municipality prior to the commencement of~~

~~railrelated work and/or activities, and shall maintain coverage until the work and/or activities is/are accepted by the Municipality~~

3.07 PROFESSIONAL LIABILITY INSURANCE. (See Special Conditions)

- (a) ~~**General.** When performing “engineering and design” related services, or upon the request of the State or Municipality, the contractor shall carry architects/engineers professional liability insurance covering errors and omissions made during performance of contractual duties with the following minimum limits:~~

~~\$2,000,000 — Annual Aggregate~~

~~\$2,000,000 — Per Occurrence~~

- (b) **Deductibles.** The contractor shall be responsible for any and all deductibles.
- (c) **Coverage.** Prior to performing any work, the contractor shall provide evidence of professional liability insurance coverage defined under this Section. In addition, the contractor shall maintain continuous professional liability coverage for the period of the contract and for a period of five years following substantial completion of construction.

Section 4: COMPLIANCE WITH LAWS

4.01 APPLICABLE LAW: This Agreement will be governed by the laws of the State of Vermont.

4.02 GENERAL COMPLIANCE WITH LAWS; RESPONSIBILITY FOR VIOLATION.

The contractor shall observe and comply with all federal, state, and municipal laws, bylaws, ordinances, and regulations in any manner affecting the conduct of the work and the action or operation of those engaged in the work, including all such orders or decrees as exist at present and those which may be enacted, adopted, or issued later by bodies or tribunals having any jurisdiction or authority over the work; and the contractor shall defend, indemnify and save harmless the State, any affected railroad(s), and any affected municipality(ies), and all their officers, agents, and employees against any claim or liability arising from or based on the violation of any such law, bylaws ordinances, regulations, order, or decree, whether by the contractor in person, its employee(s), or by the contractor’s subcontractor(s) or agent(s), or employee(s) or agents thereof.

If the contractor discovers any provision(s) in the contract contrary to or inconsistent with any law, ordinance, regulation, order, or decree, the contractor shall immediately report it to the Local Project Manager in writing.

In particular, but not limited thereto, the contractor’s attention is directed to the various regulations promulgated and enforced by the United States, VOSHA, environmental protection,

and other resource agencies.

The Contractor shall comply with all applicable Federal, State and local laws.

4.03 SEVERABILITY. Provisions of the contract 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 contract is unenforceable or invalid, that provision shall be deemed severed from the contract, 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 contract.

4.04 DEBARMENT CERTIFICATION. By signing a contract, the contractor certifies to the best of its knowledge and belief that neither it nor its principals:

- (a) Is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any state/federal agency;
- (b) Are not presently suspended, debarred, voluntarily excluded or determined ineligible by any federal/state agency;
- (c) Do not have a proposed debarment pending; and
- (d) Have not been indicted, convicted, or had a civil judgment rendered against him/her/it 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 or termination of the contract, but will be considered in determining the contractor's responsibility. The contract shall indicate any exception, identify to whom or to what agency it applies, and state the date(s) of any and all action(s). Providing false information may result in criminal prosecution and/or administrative sanctions.

4.05 LOBBYING. The contractor certifies, by signing the contract, that to the best of its knowledge, belief, and ability:

- (a) No state/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 state/federal contract, the making of any state/federal grant, the making of any state/federal loan, the entering into of any cooperative agreement, or the

extension, renewal, amendment or modification of any state/federal contract grant, loan or cooperative agreement.

- (b) If any funds, other than state/federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any state/federal agency, a member of Congress, or an employee of a member of Congress in connection with this state/federal contract grant loan, or cooperative agreement, the contractor shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (c) That it shall require that the language of this Certification be included in the award documents for all sub awards at all tiers (including subcontractors, subgrants and agreements under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

For any contract utilizing funds from the Federal Transit Administration (FTA) totaling more than One Hundred Thousand Dollars (\$100,000) a separate lobbying certificate must be filled out, signed, and submitted by the contractor, at the time of the contract award. The Municipality will provide the certificate to contractors who are required to comply with this obligation. It is the Contractor's responsibility to complete and submit the form. Failure of the municipality to provide the form does not alleviate the Contractor's responsibility.

~~4.06 DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY REQUIREMENTS.~~

~~Under the terms of the contract, the expression referred to as DBE shall be considered equivalent to the Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) as defined under 49 CFR Part 26.~~

- ~~(a) Policy: It is the policy of the USDOT that DBEs shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.~~
- ~~(b) DBE Obligation: The Municipality and its contractors agree to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. The Municipality and its contractors shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of USDOT assisted contracts.~~
- ~~(c) Sanctions for Noncompliance: The contractor is hereby advised that failure of a contractor or subcontractor performing work under this contract to carry out~~

~~the requirements established under Sections 4.06 (a) and (b) shall constitute a breach of contract and, after notification by the Municipality, may result in termination of this contract by the Municipality or such remedy as the Municipality may deem appropriate.~~

~~(d) Inclusions in Subcontracts: The contractor shall insert the following DBE policy requirements in each of its subcontracts and shall insert a clause requiring its subcontractors to include these same requirements in any lower tier subcontracts that the subcontractors may enter into, together with a clause requiring the inclusion of the DBE policy requirements in any further subcontracts that may in turn be made:~~

~~“The contractor or subcontractor shall not discriminate on the basis of race, color, sex, or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contractor deems appropriate.”~~

~~This DBE policy must be included in all subcontracts, and shall not be incorporated by reference.~~

~~(e) VAOT Annual DBE Goal: VAOT sets an overall annual goal for DBE participation on federally funded contracts, that is reviewed and revised each year, in accordance with the requirements of 49 CFR Section 26.45. For the specification of the overall annual DBE goal and an explanation of goal-setting methodology, contractors are directed to the VAOT DBE webpage at <http://www.aot.state.vt.us/CivilRights/DBE.htm>.~~

4.07 CIVIL RIGHTS, EQUAL EMPLOYMENT OPPORTUNITY AND AMERICANS

WITH DISABILITIES ACT. During performance of the contract, the contractor will not discriminate against any employee or applicant for employment because of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, 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, and Executive Order 11246 as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR chapter 60). The contractor shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulations 49 CFR Part 21 through Appendix C. Accordingly, all subcontracts shall include reference to the above.

The contractor shall comply with all the requirements of Title 21, V.S.A., Chapter 5, Subchapter 6, relating to fair employment practices to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Contractor under this Agreement. Contractor further agrees to include this provision in all subcontracts

4.08 ENVIRONMENTAL REGULATIONS. Any contract in excess of one hundred thousand dollars (\$100,000.00) shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. Part 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. Part 1368), Executive Order 11738, and Environmental Protection Agency 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 state, Agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

In the event of conflict between these environmental requirements and pollution control laws, rules, or regulations of other federal, state, or local agencies, the more restrictive laws, rules, or regulations shall apply.

4.09 FALSE STATEMENTS. To assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law (see, e.g., 18 U.S.C. 1020) as well as the laws of the State of Vermont.

4.10 PROMPT PAYMENT.

(a) The contractor, by accepting and signing the contract, agrees to fully comply with the provisions of 9 V.S.A. Chapter 102, also referred to as Act No. 74 of 1991 or the Prompt Payment Act, as amended. This will apply whether or not the contract falls under the literal provisions of 9 V.S.A. Chapter 102.

In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary contract, payments shall be made within seven days from receipt of a corresponding progress payment by the Municipality to the contractor, or seven days after receipt of a subcontractor's invoice, whichever is later. Failure to comply constitutes a violation of this contract.

Violations shall be reported to the VTrans Office of Civil Rights for review. Failure to resolve disputes in a timely manner will result in a complaint made to the Agency's Chief of Contract Administration. In the Agency's judgment,

appropriate penalties may be invoked for failure to comply with this specification. Penalties may include debarment or suspension of the ability to submit proposals.

- (b) The requirements of Section 4.10a must be included in all subcontracts.

4.11 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.

4.12 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.

4.13 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. 94-163, 89 Stat. 871).

Section 5: CONTRACTUAL AGREEMENTS

5.01 ENTIRE AGREEMENT: This Agreement represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect

5.02 ADMINISTRATION REQUIREMENTS. By signing the contract the contractor agrees to comply with the following provisions and certifies that the contractor is in compliance with the provisions of 49 CFR Part 18.36 – Procurement,(i)- Contract Provisions, with principal reference to the following:

- (a) MUNICIPALITY'S OPTION TO TERMINATE. The contract may be terminated in accordance with the following provisions:
 - (1) Breach of Contract: Administrative remedies - the Municipality may terminate the contract for breach of contract. Termination for breach of contract will be without further compensation to the contractor.
 - (2) Termination for Cause: Upon written notice to the contractor, the Municipality may terminate the contract, as of the date specified in the

written notice 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 termination.

- (3) Termination for Convenience: The Municipality may, at any time prior to completion of services specified under the contract, terminate the contract by submitting written notice to a contractor fifteen (15) days prior to the effective date, via certified or registered mail, of its intention to do so.

When a contract is terminated 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.

When the Municipality terminates the contract for its convenience, the Municipality shall make an equitable adjustment of the contract price, but in doing so shall include no payment or other consideration for anticipated profit on unperformed services.

However, if a notice of termination for convenience is given to a contractor prior to completion of twenty (20) percent of the services provided for in the contract (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 the date of the notice of termination that are in excess of the amount earned under the approved fees 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.

- (4) Lack of Funding: If postponement, suspension, abandonment, or termination is ordered by the Municipality because it lacks sufficient funding to complete or proceed with the project, the contractor may not make a claim against the Municipality in any form or forum for loss of anticipated profit.

- (b) Proprietary Rights: If a patentable discovery or invention results from work performed under the contract, all rights accruing from such discovery or invention

shall be the sole property of the contractor. The State, the Municipality, and the United States Government shall have 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 contract.

- (c) Publications: All data, EDM, valuable papers, photographs and any other documents produced under the terms of the contract shall become the property of the Municipality. The contractor agrees to allow access to all data, EDM, valuable papers, photographs, and other documents to the Municipality, the State or United States Government at all times. The contractor shall not copyright any material originating under the contract without prior written approval of the Municipality.
- (d) Ownership of the Work: All studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM, photographs, and other material prepared or collected by the contractor, hereafter referred to as "instruments of professional service," shall become the property of the Municipality as they are prepared and/or developed during performance of the work of the contract. If a contractor uses a proprietary system or method to perform the work, only the product will become the property of the Municipality.

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

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

- (e) Rights and Remedies Additional: The rights and remedies of the Municipality under this article are in addition to any other rights and remedies that the Municipality may possess by law or under this contract.
- (f) Decisions Final and Binding: Decisions of the Municipality on matters discussed in this article shall be final and binding.

5.03 PERSONNEL REQUIREMENTS AND CONDITIONS. The contractor shall employ only qualified personnel to supervise and perform the work. The Municipality shall have the right to approve or disapprove key personnel assigned to administer activities related to the contract.

The contractor shall supply resumes for staff proposed to work on assignment(s) under contracts for review, and acceptance, or rejection, by the Municipality. This requirement may be waived if the proposed staff has worked on similar projects for the Municipality in the past. The Municipality retains the right to interview the proposed staff.

Except with the approval of the Municipality, during the life of the contract, the contractor shall not employ:

- (a) Personnel on the payroll of the State or the Municipality who are directly involved with the awarding, administration, monitoring, or performance of the contract or any project that is the subject of the contract.
- (b) Any person so involved within one (1) year of termination of employment with the State or 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 the contract, and that no company or person has been paid or has a contract 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 contract. For breach or violation of this warranty, the Municipality shall have the right to terminate the contract, without liability to the Municipality, and to retrieve all costs incurred by the Municipality in the performance of the contract.

The Municipality reserves the right to require removal of any person employed by a contractor from work related to the contract for misconduct, incompetence, or negligence, or who neglects or refuses to comply with the requirements of the contract. The decision of the Municipality, in the due and proper performance of its duties, shall be final and not subject to challenge or appeal beyond those described in Section 5.12.

5.04 NO EMPLOYEE BENEFITS FOR CONTRACTOR: The Contractor understands that the Municipality will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to Municipal employees, nor will the Municipality withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of signing of the Agreement. The Contractor understands that all tax returns required by the Internal Revenue

Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Contractor, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the

5.05 ASSIGNMENTS, TRANSFERS AND SUBLETTING. The contractor shall not assign, sublet, or transfer any interest in the work covered by the contract without prior written consent of the Municipality and appropriate federal agencies, if applicable. 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, sublet or assign any portion of the work shall in no way relieve the contractor of responsibility for the performance of that portion of the work so affected. Except as otherwise provided in these specifications, the form of the subcontractor's contract shall be as developed by the contractor.

Any authorized subcontracts shall contain all of the same provisions specified for and attached to the original contract with the Municipality. The Municipality shall be provided copies of all signed subcontracts.

5.06 PERFORMANCE AND COMPLETION OF WORK. The contractor shall perform the services specified in accordance with the terms of the contract and shall complete the contracted services by the completion dates specified in the contract.

With the exception of ongoing obligations (*e.g.*, insurance, ownership of the work, and appearances) upon completion of all services covered under the contract and payment of the agreed upon fee, the contract with its mutual obligations shall be terminated.

If, at any time during or after performance of the contract, the contractor discovers any design errors, change(s) in standards, work product, or other issues that warrant change(s), the contractor shall notify the Local Project Manager immediately. This paragraph also applies to those projects that are under construction or have been constructed.

5.07 CONTINUING OBLIGATIONS. The contractor agrees that if, because of death(s) or other occurrences, it becomes impossible to effectively perform its services in compliance with the contract, neither the contractor nor its surviving principals shall be relieved of their obligations to complete the services under the contract. However, the Municipality may terminate the contract if it considers a death, incapacity, or other removal of any principal(s) and/or key project personnel to be a loss of such magnitude that it would affect the contractor's ability to satisfactorily comply with the contract.

5.08 APPEARANCES.

- (a) Hearings and Conferences: The contractor shall provide professional services required by the Municipality that are necessary for furtherance of any work covered under the contract. 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 services provided under the contract.

The contractor shall perform any liaison that the Municipality deems necessary for the furtherance of the work and participate with the Municipality, at any reasonable time, in conferences, concerning interpretation and evaluation of all services provided under the contract.

The contractor further agrees to participate in meetings with the Municipality, the State and applicable Federal Agencies, and any other interested or affected participants for the purpose of review or resolution of any conflicts pertaining to the contract. The contractor shall be equitably paid for such services, and for any reasonable expenses incurred in relation thereto, in accordance with the contract.

(b) Appearance as Witness: If and when required by the Municipality, the contractor, or an appropriate representative, shall prepare for and appear in, on behalf of the Municipality, any litigation or other legal proceeding concerning any relevant project or related contract. The contractor shall be equitably paid for such services, and for any reasonable expenses incurred in relation thereto, in accordance with the contract.

5.09 CHANGES AND AMENDMENTS. Extra work, additional services or changes may necessitate the need to amend the contract. Extra work, additional services or changes must be properly documented and approved by the Local Project Manager, or an authorized official delegated this responsibility, prior to initiating action of any extra work, additional services, or changes.

5.10 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 that such forms and samples may be modified, altered, and augmented from time to time by the Municipality. It is the responsibility of the contractor to ensure that it has the latest versions applicable to the contract.

5.11 EXTENSION OF TIME. The contractor agrees to perform the work in a diligent and timely manner; no charges or claims for damages shall be made by the contractor for delays or hindrances from any cause whatsoever. 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 may be granted only by amendment, and only for excusable delays such as delays beyond the control of the contractor and without the fault or negligence of the contractor.

The contractor may, with justification, request in writing an extension of the allotted time for completion of the work. A request for extension will be evaluated, and if the Municipality

determines that the justification is valid, an extension of time for completion of the work may be granted. A request for extension of time must be made before the contractor is in default.

The decision of the Municipality relative to granting an extension of time shall be final and binding.

5.12 RESOLUTION OF CONTRACT DISPUTES. The parties shall attempt to resolve any disputes that may arise under the contract by negotiation. Any dispute not resolved by negotiation shall be referred to the Local Project Manager for determination. If the contractor is aggrieved by the decision of the Local Project Manager, the contractor must file an appeal following the process described below.

(a) This Section sets forth the exclusive appeal remedies available with respect to this contract. The Contractor, by signing the contract, expressly recognizes the limitation on its rights to appeal contained herein, expressly waives all other rights and remedies and agrees that the decision on any appeal, as provided herein, shall be final and conclusive. These provisions are included in this contract expressly in consideration for such waiver and agreement by the Contractor.

(b) A Contractor may appeal any determination regarding the contract by filing a notice of appeal by hand delivery or courier to the Director of Public Works. The notice of appeal shall specifically state the grounds of the protest.

(c) Within seven (7) calendar days of the notice of appeal the Contractor must file with 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 clear and convincing evidence.

(d) 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.

(e) Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except the Director of Public Works, in its sole discretion, may decide to permit a hearing or argument if it determines that such hearing or argument is necessary for the protection of the public interest. The Director of Public Works shall issue a written decision regarding the appeal after it receives the detailed statement of appeal. Such decision shall be final and conclusive.

(f) If the Director of Public Works concludes that the Contractor's has established a basis for appeal, the Director of Public Works will determine what

remedial steps, if any, are necessary or appropriate to address the issues raised in the appeal. Such steps may include, without limitation, withdrawing or revising the decisions, or taking other appropriate actions.

5.13 EXCUSABLE FAILURE TO COMPLY WITH TIME SCHEDULE. 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, but not limited to, 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 contract within two (2) years of the originally scheduled completion date, either party may by written notice request an extension of time or terminate the contract.

5.14 NO ADVANTAGE FROM ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS. Neither the contractor nor the Municipality shall take advantage or be afforded any benefit as the result of apparent error(s) or omission(s) in the contract documents. If either party discovers error(s) or omission(s), it shall immediately notify the other.

5.15 NO GIFTS OR GRATUITIES: Contractor shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the Municipality or the State during the term of this Agreement.

5.16 ADDITIONAL ADMINISTRATIVE REQUIREMENTS:

- (a) Copeland "Anti-Kickback" Act. For any Federal-Aid Contracts or subcontracts for construction or repair, the Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. Part 874) as supplemented by Department of Labor Regulations (29 CFR Part 3).
- (b) Davis-Bacon Act. For any Federal-Aid construction contracts in excess of \$2,000, the Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. Section 276a to 267a-7) as supplemented by Department of Labor Regulations (29 CFR Part 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 Contractor agrees to comply with the Sections 103 and 107 of the Contract Working Hours and Safety Standards Act (40 U.S.C. Section 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5).

- (d) Exclusionary or Discriminatory Specifications. Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant of loan funds to support procurements utilizing exclusionary of discriminatory specifications.

Section 6: OPERATIONAL STANDARDS

6.01 RESPONSIBILITY FOR SUPERVISION. The contractor shall be responsible for supervision of contractor employees and 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 contract.

6.02 WORK SCHEDULE AND PROGRESS REPORTS. Prior to initiating any work, the contractor shall work with the Municipality's Local Project Manager to develop a work schedule showing how the contractor will complete the various phases of work to meet the completion date and any interim submission date(s) in the contract. The Municipality will use this work schedule to monitor the contractor.

The contractor during the life of the contract shall make monthly progress reports, or as determined by the Local Project Manager, indicating the work achieved through the date of the report. The contractor shall link the monthly progress reports to the schedule. The report shall indicate any matters that have, or are anticipated to, adversely affected 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. The revised work schedule shall be due as of the date specified by the Municipality.

6.03 UTILITIES. Whenever a facility or component of a private, public, or cooperatively owned utility will be affected by proposed construction, the Contractor shall consult with the Utility Section and initiate contacts and/or discussions with the affected owner(s) regarding requirements necessary for revision of facilities, both above and below ground. All revisions must be completely and accurately exhibited on detail sheets or plans. The contractor shall inform the Municipality, in writing, of all contacts with utility facility owners, and the results thereof.

6.04 PUBLIC RELATIONS. Whenever it is necessary to perform work in the field (*e.g.*, with respect to reconnaissance, testing, construction inspection and surveying) the contractor shall 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. If there is need to enter upon private property to accomplish the work under the contract, the contractor shall inform property owners and/or tenants in a timely manner and in accordance with relevant statutes. All work will be done with minimum damage to the land and disturbance to the owner thereof. Upon request of the contractor, the Municipality shall furnish a letter of introduction to property owners soliciting their cooperation and explaining

that the contractor is acting on behalf of the Municipality.

6.05 INSPECTION OF WORK. The Municipality, the State and applicable federal agencies shall, at all times, have access to the contractor's work for the purposes of inspection, accounting and auditing, and the contractor shall provide appropriate and necessary access to accomplish inspections, accounting, and auditing. The contractor shall permit the Municipality, the State, or representative(s) of the State and applicable federal agencies the opportunity at any time to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the contractor pursuant to the contract.

A conference, visit to a site, or inspection of the work may be held at the request of the contractor, the Municipality, the State, and appropriate federal agency(ies).

6.06 WRITTEN DELIVERABLES/REPORTS. Unless otherwise identified in the scope of work, written deliverables presented under terms of the contract shall be on 8.5" 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, if applicable, and publication date. The report shall have a table of contents and each page shall be numbered consecutively. Draft reports shall be clearly identified as such.

6.07 PLANS, RECORDS AND AVAILABLE DATA. At the request of the contractor, the Municipality will make available to the contractor, at no charge, all information and data related to the contract.

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.

Section 7: PROJECT DEVELOPMENT AND STANDARDS

7.01 PLANS, RECORDS AND AVAILABLE DATA. At the request of the contractor, the Municipality will make available to the contractor, at no charge, all information and data related to the contract.

7.02 DESIGN SPECIFICATIONS, STANDARDS, MANUALS, GUIDELINES,

DIRECTIVES AND POLICIES. The contractor shall comply with all applicable statutes, regulations, ordinances, specifications, manuals, standards, guidelines, policies, directives and any other requirements related to the contract.

In case of any conflict with the items referenced above, the contractor is responsible to ascertain and follow the direction provided by the Municipality.

7.03 ELECTRONIC DATA MEDIA. Contractors, subcontractors, and representative(s) thereof performing work related to the contract shall 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. For those projects that are to be stored on the VTrans plan archival system the following shall apply:

(a) CADD Requirements.

CADD requirements are available in “The Vermont Agency of Transportation CADD Standards and Procedure Manual” on the VTrans web page at <http://www.vtrans.vermont.gov>. VTrans has developed this manual to ensure that all electronic CADD files delivered to and taken from the Agency are in formats that can be utilized for engineering purposes without modification. VTrans will not accept or pay for any CADD files which do not adhere to the requirements specified in the CADD manual.

(b) VTrans Web Page and File Transfer Protocol (FTP) Sites - Disclaimer.

The files located on the VTrans web page and FTP sites are subject to change. The contractor is responsible for maintaining contact with VTrans to determine if any changes affect the work being produced by the contractor. Although VTrans makes every effort to ensure the accuracy of its work, it cannot guarantee that transferred files are error free. VTrans is not responsible in any way for costs or other consequences, whether direct or indirect, that may occur to the contractor or any subsequent users of the information due to errors that may or may not be detected.

(c) Geographic Information System Requirements.

The contractor shall provide to the Municipality all spatially-referenced digital data developed for or used in a project. Such data shall conform to relevant standards and guidelines of the Vermont Geographic Information System with respect to digital media, data format, documentation, and in all other respects. Copies of the standards and guidelines can be obtained from the Vermont Center for Geographic Information, Inc., 58 South Main Street, Suite 2, Waterbury, VT 05676; (802) 882-3000 or at www.VCGI.vermont.gov.

(d) Data Specifications.

(1) Data structures (databases, data files, and other electronic information) shall provide 4-digit date century recognition. Example: 2016 provides “date century recognition,” while ‘16 does not.

(2) All stored data shall contain date century recognition, including, but not limited to, data stored in databases and hardware/device internal system dates.

(3) Calculations and program logic shall accommodate both same century and multi-century formulas and data values. Calculations and program logic includes, but are not limited to, sort algorithms, calendar generations, event recognition, and all processing actions that use or produce data values.

(4) Interfaces to and from other systems or organizations shall prevent noncompliant dates and data from entering or exiting any State system.

(5) User interfaces (*i.e.*, screens, reports, and similar items) shall accurately show 4-digit years.

(e) General Specifications.

To provide uniform and consistent integration with electronic data transfer, all data, other than specific applications previously mentioned, shall be in Microsoft’s Office format. The desktop suite includes word processing, spread sheets and presentations. All transmissions of e-mail must be in Rich Text (RTF) or Hyper Text Markup Language (HTML) format.

7.04 REVIEWS AND APPROVALS. All work prepared by the contractor, subcontractor(s), and representatives thereof pursuant to the contract shall be subject to review and approval by the Municipality. Approval for any work shall be documented in writing.

Approvals shall not relieve a contractor of its professional obligation to correct any defects or errors in the work at the contractor’s expense.

The pertinent federal entity may independently review and comment on the contract deliverables. The contractor, through the Municipality, shall respond to all official comments regardless of their source. The contractor shall supply the Municipality with written copies of all correspondence relating to reviews. All comments must be satisfactorily resolved before the affected work is advanced.

Section 8: PAYMENT FOR SERVICES RENDERED

8.01 PAYMENT PROCEDURES. The Municipality will pay the contractor, or the contractor's legal representative, progress payments monthly or as otherwise specified in the contract.

- (a) **General:** Payment generally will be determined by the percentage of work completed as documented by a progress report of such work. The total percentage of work billed shall be within ten (10) percent of the total percentage of work completed. The percentage of work completed is based on the actual contract work produced, as outlined in the monthly progress report.
- (b) **Hourly-Type Contracts:** For hourly type contracts, payments will be made based on documented hours worked and direct expenses encumbered, as allowed by the contract.
- (c) **Actual Costs and Fixed Fees:** When applicable for the type of payment specified in the contract, the progress report shall summarize actual costs and any earned portion of a fixed fee.
- (d) **Maximum Limiting Amount Cannot Be Exceeded:** The total amount invoiced for the contract and the total amount paid pursuant to the contract cannot exceed the contract's Maximum Limiting Amount.
- (e) **Invoices:** Invoices shall be submitted to the Municipality's Local Project Manager. The invoice must adhere to all terms of the contract. The "final invoice" shall be so labeled. All invoices must:
 - 1) Be originals signed by a company official and be accompanied by two copies, with documentation for the original and all copies.
 - 2) Indicate the appropriate project name, project number if applicable, and contract number. When applicable, invoices shall further be broken down in detail between projects.
 - 3) Be dated and list the period of performance for which payment is requested.
 - 4) Include a breakdown of direct labor hours by classification of labor, phases and tasks, if applicable. For reporting purposes, however, the amounts can be combined for phases that are paid from the same funding source.

5) Not include overtime rates unless the Municipality's Local Project Manager provides prior written approval, if applicable. Information regarding overtime can be found in 48 CFR Ch. 1, Section 22.103.

6) Be accompanied by documentation to substantiate necessary charges. Documentation of all charges must accompany the original invoice and each copy.

(f) Meals and Travel Expenses: When applicable for the type of payment specified in the contract, reimbursement of expenses for meals and travel shall be limited to the current, approved in-state rates as determined by the State's non-management bargaining unit labor contract, and need not be receipted. Current in-state expense reimbursement rates may be obtained from the Vermont Department of Human Resources.

(g) Other Expenses: Expenses for the following items will be reimbursed at reasonable rates as determined by the Municipality. In all instances, receipts or bills indicating costs pertaining to the project identified, inclusive of any discounts given to the contractor, must be submitted.

1. Lodging.
2. Telephone and fax.
3. Printing and reproduction.

For printing and reproduction work performed within the contractor's firm, log sheets are sufficient if they clearly indicate the contract or project copies.

4. Postage and shipping.

Contractor shall choose the most economical type of service (regular mail, overnight express, other) workable for the situation. The use of express mail or overnight delivery should be limited to those instances when such expenditures are warranted.

Reimbursement of all other expenses is subject to approval by the Municipality and all other reimbursement requests must include receipts or other documentation to substantiate the expenses. Except as otherwise provided in the contract, all requests for reimbursement of direct expenses must reflect actual costs inclusive of any discounts given to the contractor.

The contractor must attach any sub-contractor invoices, ensure that they adhere to the terms of the contract, and include all necessary receipts and other documentation. **Mark-up on subcontractor invoices is not allowed.**

(h) Payment Is Not Acceptance: Approval given or payment made under the contract shall not be conclusive evidence of the performance of said contract,

either wholly or in part. Payment shall not be construed to be acceptance of defective work or improper materials.

(i) Payment for Adjusted Work: As adjustments are required for additions, deletions, or changes to the contract, payment for such work shall be in accordance with Subsection 8.02 - Payment for Additions, Deletions or Changes and/or any applicable fees set forth in amendment(s) to the contract.

(j) If the contractor discovers error in a submitted invoice or payment, the contractor shall notify the Local Project Manager of the error prior to the submission of any additional invoices. The local project manager will provide direction on how the error is to be resolved.

8.02 PAYMENT FOR ADDITIONS, DELETIONS OR CHANGES: The Municipality may, upon written notice, require changes, additions or deletions to the work/contract. Whenever possible, any such adjustments shall be administered under the appropriate fee established in the contract based on the adjusted quantity of work.

The Municipality may, upon written notice, and without invalidating the contract, require changes resulting from revision or abandonment of work already satisfactorily performed by the contractor or changes in the scope of work.

If the value of such changes, additions or deletions is not otherwise reflected in payments to the contractor pursuant to the contract, or if such changes require additional time and/or expense to perform the work, the contract may be amended accordingly.

The contractor agrees to maintain complete and accurate records, in a form satisfactory to the Municipality, for any extra work or additional services in accordance with Subsection 6.05 - Inspection of Work. When extra work or additional services are ordered, the contractor shall perform such work or services only after an amendment has been fully executed or a written notice to proceed is issued by the Municipality.

8.03 RELIANCE BY THE MUNICIPALITY ON REPRESENTATIONS: All payments by the Municipality under this Agreement will be made in reliance upon the accuracy of all prior representations by the Contractor, including but not limited to bills, invoices, progress reports and other proofs of work.

Section 9: AUDIT REQUIREMENTS

9.01 – AUDIT REQUIREMENTS. All Contractors and subcontractors shall have on file with the VTrans Audit Section a current AF 38 Form and related documentation appropriate for the type and size of contract with the Municipality under this agreement. (See below for a link to the AF 38 Form on the VTrans website).

9.02 – INDIRECT COST CERTIFICATION. All contractors entering into a contract to provide engineering and/or design related services, regardless of amount, must have a current INDIRECT COST CERTIFICATION form on file with the VTrans Audit Section. The form is available on the VTrans Contract Administration website, <http://vtranscontracts.vermont.gov>.

9.03 RECORD AVAILABLE FOR AUDIT. The Contractor will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the Municipality, the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The Municipality, the State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

Section 10. SECRETARY OF STATE

10.01 REGISTRATION WITH SECRETARY OF STATE. The contractor shall be registered with the Vermont Secretary of State to do business in the State of Vermont if the contractor:

- (a) Is a domestic or foreign corporation.
- (b) Is a resident co-partner or resident member of a co-partnership or association.
- (c) Is (are) a non-resident individual(s) doing business in Vermont in his/her (their) individual capacity(ies).
- (d) Is doing business in Vermont under any name other than the Contractor's own personal name.

This registration must be complete prior to contract preparation. Current registration must be maintained during the entire contract term.

SPECIAL CONDITIONS

The SPECIFICATIONS FOR CONTRACTOR SERVICES, as modified herein, shall apply to this Contract.

1.02 DEFINITIONS:

CONTRACTOR: Shall refer to Consultants when the Contract is between a Municipality and a professional consultant, or other professional services as provided.

MUNICIPALITY: As referenced shall be the City of Burlington, or City.

3.02 WORKERS' COMPENSATION. Add:

Minimum limits for Employer's Liability:

- (a) Bodily Injury by Accident: \$500,000 each accident
- (b) Bodily Injury by Disease: \$500,000 policy limit, \$100,000 each employee

3.03 GENERAL LIABILITY AND PROPERTY DAMAGE. Replace this section in its entirety with the following:

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

The policy shall be on an occurrence form with limits not less than:

\$1,000,000	Per Occurrence
\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal & Advertising Injury
\$ 250,000	Fire Damage
\$ 50,000	Legal/Liability
\$ 5,000	Medical

The Contractor shall name the Municipality and State of Vermont, and their officers and employees, as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.

3.07 PROFESSIONAL LIABILITY INSURANCE. Section (a) shall be replaced in its entirety with the following:

- (d) **General.** When performing "engineering and design" related services, or upon the request of the State or Municipality, the contractor shall carry architects/engineers professional liability insurance covering errors and omissions made during performance of contractual duties with the following minimum limits:

\$3,000,000 – Annual Aggregate

\$2,000,000 – Per Occurrence

4.02 GENERAL COMPLIANCE WITH LAWS; RESPONSIBILITY FOR VIOLATION. This section shall be modified as follows by Add at the end of the last sentence:

Including but not limited to the Prequalification of Contractors and Burlington Livable Wage Ordinance as applicable based on the contract value limits set in the Ordinance. The Women's Economic Opportunity Program, Non-Outsourcing Ordinance, and the Union-Deterrence Ordinance shall be applicable to all Contracts with the Municipality except where Federal Highway Association preclude the use of these contracts or the work type is "engineering and design related". The Contractor shall provide the required certifications attesting to compliance with these ordinances.

- (a) **City of Burlington Ordinances.** (available online at <http://www.codepublishing.com/vt/burlington/>)

~~(1) Prequalification of Construction Contractors. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE V - PREQUALIFICATION OF CONSTRUCTION CONTRACTORS, Sec. 21-67 through Sec. 21-78. For all projects where total project cost is one hundred thousand dollars (\$100,000.00) or more.~~

(2) City Livable Wages Ordinance. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE VI - LIVABLE WAGES, Sec. 21-80 through Sec. 21-87. For any contractor that has a service contract(s) with the City of Burlington where the total amount of the service contract or service contracts exceeds fifteen thousand dollars (\$15,000.00) for any twelve (12) month period, including any subcontractors of such contractor or vendor.

(3) Women's Economic Opportunity Program. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE II – WOMEN IN CONSTRUCTION TRADES, Sections 21-

50 through 21-55. For the projects where the total cost is fifty thousand dollars (\$50,000.00) or more.

- (4) City Outsourcing Ordinance. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE VII - OUTSOURCING, Sec. 21-90 through Sec. 21-94. For any contract for services which involves any city funds and the total amount of the contract is fifty thousand dollars (\$50,000.00) or more
- (5) City Union Deterrence Ordinance. As defined by SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE VIII – UNION DETERRENCE, Sec. 21-100 through Sec. 21-103. For Any contract for services which involves any City funds and the total amount of the contract is fifteen thousand dollars (\$15,000.00) or more

7.03 ELECTRONIC DATA MEDIA. Modify (a) with the following:

For Municipal only projects the MPM shall determine the CADD software preference and version.

END SPECIAL CONDITIONS