



**CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS**

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**MANHATTAN DRIVE WEST SLOPE FAILURE
REQUEST FOR PROPOSALS**

4/27/15

I. BACKGROUND

The City of Burlington Vermont Department of Public Works is seeking to solicit competitive technical and cost proposals from a design team qualified to investigate, evaluate, and prepare alternative repair solutions with estimates for the Manhattan Drive West (MDW) Slope Failure. The MDW slope failure is believed to have occurred during the summer of 2013, however it was not known to the City of Burlington until summer of 2014.

The slope failure occurred at the northwest corner of the intersection of Manhattan Drive/VT 127 (Beltline)/Park Street; and continues northwest along both banks of the Beltline and Manhattan Drive. Within the failure area there are several storm water outfalls that have been compromised by the failure. There is also the concern of the proximity of the failure to both the Beltline and Manhattan Drive

II. OBJECTIVE

The City of Burlington is seeking a civil engineering firm to prepare proposals that will gather baseline site survey and geotechnical borings necessary to determine if the existing condition has the potential to lead to long term destabilization of the slope and impact to the infrastructure that has been compromised.

If it is determined there existing condition indicates the slope has been destabilized and the unarmored outfalls will exacerbate the existing condition then we would ask the consultant examine the range of repair alternatives and provide the appropriate repair solution, along with an engineer's estimates of most probable cost, and an estimated duration for construction start to finish.

III. SCHEDULE:

Request for Proposal

- RFP issued Monday, April 27, 2015
- Non-Mandatory Site meeting, Tuesday, May 5, 2015, 10:30 a.m.

- Questions will be accepted in writing until Wednesday, May 6, 2015, 12:00 p.m.
- Response to questions will be issued by the City on Thursday May 7, 2015 at the close of business to ensure that all parties have adequate time to review the answers issued by the City.
- Proposal must be submitted by 2:00 p.m., Tuesday May 12, 2015 (EST).

Project Schedule

- Anticipated notice to proceed, May 19, 2015
- Complete Investigation and Assessment, June 30, 2015

IV. SCOPE OF WORK

Proposals shall include the following Scope of Services:

- *Phase 1: Evaluation of the Existing Conditions*
The consultant shall perform a topographic survey of the entire slope failure and surrounding features; geotechnical borings to determine existing soil strength, strata, and composition; report of findings and stability of the site.
- *Phase 2: Evaluation of Repair Alternatives with Cost Estimates*
The consultant shall prepare repair alternatives for the outfalls that have been impacted by the failure and measures to stabilize the slope. In addition, prepare an estimate of quantities and associated costs for construction for each alternative.

Each element of the scope shall have an itemized cost, with a total not-to-exceed cost proposal.

V. QUALIFICATIONS REQUIREMENTS

All consultants will be required to prepare Technical Qualifications and a Cost Proposal as part of this submission. In order to be considered responsive to this RFP, each submittal must conform to the following requirements. The consultant shall:

- Submit one (1) copy of the Technical Qualifications (see requirements below). Number all pages consecutively, in a sealed separate package. Proposals shall be double sided, and not exceed 10 pages total.
- Submit one (1) copy of the Cost Proposal (see requirements below). Number all pages consecutively, in a sealed, separate package.

Clearly indicate the following on the outside of the Cost Proposal:

1. Project name (City of Burlington Manhattan Drive West Slope Failure-Cost Proposal);
2. Contents (Cost Proposal)
3. Name and address of the consultant

Clearly indicate the following on the outside of the Technical Qualifications:

1. Project name (City of Burlington Manhattan Drive West Slope Failure -Technical Qualifications);
2. Contents (Technical Qualifications)
3. Name and address of the consultant.

Submissions must be received by 2:00 p.m. Tuesday, May 12th, 2015 at:
Department of Public Works
645 Pine Street, Suite A
Burlington, VT 05401

Late submissions will not be accepted.

If any of the above requirements are not met, the proposal may not be considered.

VI. TECHNICAL QUALIFICATIONS REQUIREMENTS

The Technical Qualifications should demonstrate that the Firm understands the intent and scope of the project, the character of the deliverables, 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 Proposer to supply the required services must be demonstrated.

Consultants will be evaluated on technical expertise and past performance. To assist with the evaluation, please provide the following information:

VII. INTRODUCTION TO CONSULTANT FIRM(S)

Proposers shall provide the following information relative to their firms. Similar information must be provided for each sub-consultant or each member of a joint venture.

a) Firm name and business address, including telephone number and email contact for the proposed project manager.

b) Year established. Include former firm names and year established, if applicable.

Identify the state in which the firm was organized or incorporated.

c) Type of ownership, and name and location of parent company and subsidiaries, if any.

d) Indication of whether the firm is licensed to do business in the State of Vermont, which is a requirement of this program.

e) Number of full-time employees. Part-time employees or consultants routinely engaged by the proposer may be included if clearly identified as such.

f) A description of the firm's general qualifications, including experience with similar types of rate schedule contracts.

g) A description of the specific skills and services the firm offers. (For example, traffic engineering, land surveying, landscape design, etc.)

VIII. FIRM QUALIFICATION AND EXPERIENCE OF KEY STAFF

Firms shall identify key individuals assigned to this project and include the function and/or responsibility of each of the identified individuals. Experience summaries of these key individuals shall be provided, with emphasis on previous experience in similar projects. Resumes of these key individuals shall be included as an appendix. This section should include a discussion of the firm's ability to respond to requests in a timely manner; and may include up to three recent relevant project with a similar scope of work.

IX. REFERENCES

The respondent shall submit names, addresses, and phone numbers of at least three references familiar with the consultant's ability, experience, and reliability in the performance and management of projects of a similar nature.

X. COST PROPOSAL REQUIREMENTS

The cost proposal should present a table including hourly and overtime rates for all classifications 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 total cost.

XI. CONSULTANT EVALUATION AND SELECTION

The technical qualifications will be evaluated by DPW staff. The evaluation criteria, with corresponding weight factors, are the following:

- Qualifications of the firm and personnel (including any subconsultants) to be assigned to this project and their experience completing similar projects. (35 Pts.)
- Clarity of the proposal, skills available, and expertise with specific skills. (15 Pts.)
- Ability to complete project on schedule (5 Pts.)
- Demonstration of overall project understanding and knowledge of the local area. (10 Pts.)
- Completeness of submitted proposal with all elements required by the RFP (5 Pts.)
- Cost (30 Pts.)

Following the technical qualifications evaluation, the cost proposal will next be reviewed for consistency and in light of the evaluation of the technical qualifications.

The City reserves the right to seek clarification of any proposal submitted.

XII. CONTRACT REQUIREMENTS

The City reserves the right to reject any and all proposals received as a result of this solicitation, to negotiate with any qualified source, to waive any formality and any technicalities or to cancel in part or in its entirety this RFP if it is in the best interests of the City. This solicitation of qualifications in no way obligates the City to award a contract.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM and WBE

The Vermont Agency of Transportation 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 the goal-setting methodology, consultants are directed to the VTrans DBE webpage: <http://www.aot.state.vt.us/CivilRights/DBE.htm> . The City and its consultants, and any sub-consultants, shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this work.

LIVABLE WAGE ORDINANCE

The consultants' rate schedule shall adhere to the cities livable wage ordinance (See attached in the appendix).

CONSULTANT CONTRACT PROVISIONS

The consultant's proposal shall comply with the requirements established within the City's Contract Provisions dated April 2014 as included in the appendix of this RFP.

XIII. CITY CONTACT

Questions regarding this RFP should be directed in writing to:

Laura Wheelock P.E., Public Works Engineer

Email: LWheelock@burlingtonvt.gov

Phone: 802-540-0397

XIV. ADDITIONAL INFORMATION

The consultant shall submit monthly invoices accompanied by brief, written progress reports during the active portion of the project.

All proposals become the property of the City upon submission. The cost of preparing, submitting, and presenting a proposal lies solely with the proposer.

APPENDIX

City of Burlington:
Standard Contract Provisions
Livable Wage

APPENDIX - CONTRACT PROVISIONS:

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

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

1. INDEMNIFICATION

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

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

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

RELATIONSHIP:

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

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

2. INSURANCE

GENERAL: Prior to beginning any work the Consultant shall obtain the following insurance coverage. The certificate of insurance coverage shall be documented on forms acceptable to the City. Evidence of compliance with minimum limits and coverages, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the effective date of the Agreement. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. In the event that this Contract extends to greater than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Certified copies of any insurance policies may be required. Each policy (with the exception of professional liability and workers compensation) shall name the City and the State of Vermont as an additional insured for the possible liabilities resulting from the Consultant's actions or omissions. It is agreed that the liability insurance furnished by the Consultant is primary and non-contributory for all the additional insured.

The Consultant is responsible to verify that:

- (a) All subconsultants, agents or workers meet the minimum coverages and limits plus maintain current certificates of coverage for all subconsultants, agents or workers.
- (b) All coverages shall include adequate protection for activities involving hazardous materials.
- (c) All work activities related to the agreement shall meet minimum coverages and limits.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Consultant for the Consultant's operations. These are solely minimums that have been developed and must be met to protect the interests of the City.

GENERAL LIABILITY AND PROPERTY DAMAGE:

- (a) With respect to all operations performed by the Consultant, subconsultants, agents or workers, it is the Consultant's responsibility to insure that general liability insurance coverage provides all major divisions of coverage including, but not limited to:
 - 1. Premises Operations
 - 2. Independent Contractors' Protective
 - 3. Products and Completed Operations
 - 4. Personal Injury Liability
 - 5. Contractual Liability
 - 6. Broad Form Property Damage
 - 7. Medical Expenses
 - 8. Collapse, Underground and Explosion Hazards

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

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

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

PROFESSIONAL LIABILITY INSURANCE:

- (a) General. This applies only to those Contracts specifically identified as requiring Errors & Omissions (**E&O**) Insurance. The Consultant shall carry architects/engineers professional liability insurance covering errors and omissions made during their performance of contractile duties with the following minimum limits:
 \$3,000,000 - Annual Aggregate
 \$1,000,000 - Per Occurrence
- (b) Deductibles. The consultant is responsible for any and all deductibles.
- (c) Coverage. Prior to performing any work, the Consultant agrees to provide evidence of **E&O** insurance coverage defined under this Section. In addition, the Consultant agrees to attempt to maintain continuous professional liability coverage for the period of the agreement and whenever applicable any construction work related to this agreement, and for a period of five years following substantial completion, if such coverage is reasonably available at commercially affordable premiums.

VALUABLE PAPERS INSURANCE: This applies only to those Contracts specifically identified as requiring Valuable Papers Insurance. The Consultant 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 data relating to the work, whether supplied by the City or developed by the Consultant, subconsultant, worker or agent, in the event of loss, impairment or destruction of these documents. Such coverage shall remain in force until the final plans, and all related materials, have been delivered by the Consultant to, and accepted by, the City.

The policy shall provide coverage on an each occurrence basis with limits not less than:

Valuable Papers	\$10,000
Electronic Data Media	\$10,000

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

UMBRELLA LIABILITY

- \$1,000,000 Each Event Limit
- \$1,000,000 General Aggregate Limit

3. COMPLIANCE WITH LAWS

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

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

ENVIRONMENTAL REGULATIONS: Any Contract in excess of one hundred thousand dollars shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), Section 508 of the Clean Air Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection 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 grantor, City and to the USEPA Assistant Administrator for Enforcement (EN-329).

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

The Consultant shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR Part 60). The Consultant shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulations 49 CFR § 21 through Appendix C, and Regulations under 23 CFR § 710.405 (b) . Accordingly, all subcontracts shall include reference to the above. The Consultant shall comply with all the requirements of Title 21, VSA, Chapter 5, Subchapter 6 and 7, relating to fair employment practices to the extent applicable. A similar provision shall be included in any and all subcontracts.

DEBARMENT CERTIFICATION: When signing a Contract in excess of twenty five thousand dollars, the Consultant certifies under the penalty of perjury as directed by Federal laws (48 CFR 52.209-5), that, except as noted in the Agreement, the Consultant or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds:

- (a) is not currently under suspension, debarment, voluntarily exclusion or determination of ineligibility by any Federal agency;
- (b) has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past three (3) years;
- (c) does not have a proposed debarment pending; and
- (d) has not been indicted, convicted, or had a civil judgement rendered against him/her by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

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

Exceptions shall be noted in the Contract:

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

- (a) No Federal appropriated funds have been paid or will be paid by or to any person influencing or attempting to influence an officer or employee of a government agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, renewal, amendment or modification of any Federal Contract grant, loan or cooperative Agreement.
- (b) They will complete and submit, in accordance with its instructions, Standard Form-LLL "Disclosure Form to Report Lobbying", if any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of a government agency or a Member of Congress in connection with the Federal Agreement, grant loan, or cooperative Agreement.
- (c) They shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

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

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

4. CONTRACTUAL AGREEMENTS

REGISTRATION: The Consultant agrees to become registered with the Vermont Secretary of State's office as a corporation doing business in the State of Vermont. This registration must be complete prior to contract execution.

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

- (a) Copeland "Anti-Kickback" Act. For any Federal-Aid Contracts or subcontracts for construction or repair, the Consultant agrees to comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874, as supplemented by Department of Labor Regulations, 29 CFR § 3.
- (b) Davis-Bacon Act. For any Federal-Aid construction contracts in excess of \$2,000, the Consultant agrees to comply with the Davis-Bacon Act 40 U.S.C. §§ 276a to a-7, as supplemented by Department of Labor Regulations, 29 CFR § 5.
- (c) Work Hours. For any Federal-Aid construction contracts in excess of \$2,000, or in excess of \$ 2,500 for other contracts involving employment of mechanics or laborers, the Consultant agrees to comply with the Contract Working Hours and Safety Standards Act, 40 U.S.C. §§ 327-330, as annexed by Department of Labor Regulations, 29 CFR § 5.
- (d) Proprietary Rights. The parties under the Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Agreement, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. The Consultant, however, agrees to and does hereby grant to the City, the State of Vermont and the United States Government an irrevocable, nonexclusive, non-transferable, and royalty-free license to practice each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the Agreement.
- (e) Publications. All data, EDM, valuable papers and documents produced under the terms of the Agreement, shall become the property of the City. The Consultant agrees to allow access to all data, EDM, valuable papers and documents at all times. The Consultant shall not copyright any material originating under the Agreement without prior written approval of the City.

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

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

- (a) Personnel on the payroll of the City who are directly involved with the awarding, administration, monitoring, or performance of the Agreement or any project(s) that are the subjects of the Agreement.
- (b) Any person so involved within one (1) year of termination of employment with the City.

The Consultant warrants that no company or person has been employed or retained, other than a bonafide employee working solely for the Consultant, to solicit or secure this Agreement, and that no company or person has been paid or has an agreement with the Consultant to be paid, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the City shall have the right to annul the Agreement, without liability to the City, and to regain all costs incurred by the City in the performance of the Agreement.

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

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

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

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

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

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

OWNERSHIP OF THE WORK: The Consultant agrees that the ownership of all studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM and other material prepared or collected by the Consultants, hereafter referred to as "instruments of professional service", shall become the property of the City as they are prepared and/or developed during execution of the Agreement.

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

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

PUBLIC RECORDS: The Consultant understands that any and all records related to and acquired by the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of the City.

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

APPEARANCES:

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

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

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

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

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

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

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

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

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

FAILURE TO COMPLY WITH TIME SCHEDULE: It is mutually understood and agreed to, that neither party hereto shall be held responsible for delay in performing the work encompassed herein, when such delay is due to unforeseeable causes such as acts of God, or a public enemy, fire, strikes, floods, or legal acts of public authorities. In the event that any such causes for delay are of such magnitude as to prevent the complete performance of the Agreement within two (2) years of the originally scheduled completion date, either party may by written notice request to amend or terminate the Agreement.

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

- (a) Breach of Contract. Administrative remedies - the City reserves the right to terminate a Contract for breach of Contract agreements. Termination for breach of Contract will be without further compensation to the Consultant.
- (b) Termination for Cause. The City reserves the right, upon written notice to the Consultant, to terminate the Agreement, as of a date to be specified by the City, if the Consultant fails to complete the designated work to the satisfaction of the City, within the time schedule agreed upon. The Consultant shall be compensated on the basis of the work performed and accepted by the City at the date of final acceptance of the Agreement.

- (c) Termination for Convenience. In addition to its rights and options to terminate an Agreement as provided herein, the City may, at any time prior to completion of services specified under an Agreement, terminate the Agreement by submitting written notice to a Consultant, within not less than fifteen (15) days prior to the effective date, via certified or registered mail, of its intention to do so. If the termination is for the City's convenience, payment to the Consultant will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made. However, if a notice of termination is given to a Consultant prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Consultant will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination, that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the City's approval. The Consultant shall make no claim for additional compensation against the City by reason of such termination.

5. OPERATIONAL STANDARDS

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

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

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

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

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

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

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

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

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

WRITTEN DELIVERABLES: Written deliverables, presented under terms of the Agreement, shall be on 8 1/2" by 11" paper, consecutively printed on both sides. Reports shall be bound and have a title page that identifies the name and number of the project and publication date. The report shall have a table of contents and each page shall be numbered successively. Draft reports shall be identified as such.

6. PROJECT DEVELOPMENT AND STANDARDS

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

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

- (a) VAOT's latest edition of the Standard Specifications for Construction.
- (b) VAOT's Bridge Design Manual.
- (c) All applicable AASHTO roadway, traffic, bridge, bicycle and pedestrian policies, guides and manuals.
- (d) VAOT's Manual on Survey.
- (e) VAOT's Right-of-Way Manual.
- (f) The Highway Capacity Manual - Special Report 209.
- (g) The ANSI/AASHTO/AWS D-1.5, Bridge Welding code.
- (h) The MUTCD and Vermont Supplement requirements.
- (i) The Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals
- (j) Other City directives and guidelines current at the time of the Agreement and as may be issued by the City during the progress of the design.

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

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

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

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

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

METRICATION: All work performed under a Contract shall be designed to comply with metrication units if specified in the Request for Proposals or the Scope of Work. Guide requirements for metric conversion shall follow

criteria outlined in an AASHTO publication "Guide To Metric Conversion", copyright 1993. Copies of the Guide Requirements are available from AASHTO, 444 North Capitol St., N.W., Suite 225, Washington, DC 20001.

Unless otherwise required for special cases, the Consultant shall use the following conversions for metric units:

- (a) Lengths. For lengths less than 1 kilometer use meters. For lengths less than 1 meter use millimeters. For lengths less than 1 millimeter use micrometers.
- (b) Mass. For a mass less than 1 metric ton use kilograms. For a mass less than 1 kilogram use grams. For a mass less than 1 gram use milligrams.
- (c) Liquid Volume. For liquid volumes less than 1 cubic meter use liters. For liquid volumes less than 1 liter use milliliters. A liter is one thousandth of a cubic meter or 1000 cubic centimeters.
- (d) Solid Volume. For a solid volume less than 1 cubic meter use cubic millimeters.
- (e) Area. For an area less than 1 hectare use square meters. For an area less than 1 square meter use square millimeters.
- (f) Basic Engineering Conversion Factors.
 - 1. Mass/Unit Length: Pounds/Linear Foot to kilograms/meter (kg/m)
 - 2. Mass/Unit Area: Pounds/Square Foot to kilograms/square meter (kg/M²)
 - 3. Mass Density: Pounds/Cubic Foot to kilograms/cubic meter (kg/M³)
 - 4. Force: Pounds to Newtons (N)
 - 5. Pressure: Pounds/Square Foot to Pascal (Pa = N/M²)
 - 6. Bending Moment: Newton - meter (N-m)

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

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

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

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

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

7. PAYMENT FOR SERVICES RENDERED

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

All invoices and correspondence shall indicate the applicable project name, project number and the Agreement number. When relevant, the invoice shall further be broken down in detail between projects.

When applicable, for the type of payment specified in the Agreement, expenses for meals and travel shall be limited to the current approved in-state rates, as determined by the State of Vermont's labor contract, and need not be receipted. All other expenses are subject to approval by the City and must be accompanied with documentation to substantiate their charges. Invoices shall be submitted to the City; one original and three (3) copies are required.

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

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

- (a) Indirect Cost Rates. For actual cost contracts, the Consultant is responsible for furnishing the City with independently-prepared, properly supported, Indirect Cost Rates, in accordance with 48 CFR 52.216-7, for all time periods covered under the Agreement. These rates must be developed in accordance with the cost principles in 48 CFR Part 31. A Consultants overhead rate shall be based upon an actual audited overhead rate, unless otherwise specified in the Agreement.
- (b) Contract Types. Contracts shall conform with 48 CFR Part 16 - TYPES OF CONTRACTS.

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

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

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

- (a) Fixed Price. By a price that is not subject to any adjustment on the basis of the Consultant's expenses experienced in performing the work. The Consultant is fully responsible for all costs and resulting profit or loss.
- (b) Rate Schedule. By unit prices designated in the Agreement, or by unit prices covered under any subsequent Agreements.
- (c) Actual Cost. By amounts determined on the basis of actual costs incurred, as distinguished from forecasted expenditures.

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

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

LIVABLE WAGES ORDINANCE

Bidders are advised that certain City contractors are required to comply with the City of Burlington's LIVABLE WAGES ORDINANCE. The Livable Wages Ordinance is applicable to **service contracts** with the City of Burlington (as opposed to the purchasing of goods) where the total amount of the contract or contracts with the same person or entity exceeds **\$15,000** for any twelve-month period. As of July 1, 2014, the livable wage for employees who receive health care benefits (i.e., the employer cost of or contribution of at least \$3.77 per hour) is **\$13.94** per hour. The livable wage for employees who do not receive health care benefits is **\$15.83** per hour. All contractors working in the city of Burlington are responsible for obtaining and paying the **latest** livable wage amounts. Livable Wage Rates are subject to change July 1 of the current year.

An employee of a covered contractor must be paid the livable wage during the period of time he or she expends on furnishing services funded by the City. Covered employees must agree to the payment of the livable wage as a condition of entering into a covered service contract with the City. A covered employer who violates the livable wage ordinance may be barred for receiving a contract or grant from the City for a period of up to two (2) years and may be subject to other civil enforcement remedies.

Please see Code Ordinances, City of Burlington, VT, SUBPART B - RELATED LAWS, CHAPTER 21, ARTICLE VI - LIVABLE WAGES, Sec. 21-80 through Sec. 21-87, for a more detailed description of its requirements, which can be found online at:

<http://library.municode.com/index.aspx?clientID=13987&stateID=45&statename=Vermont>

<http://www.burlingtonvt.gov/sites/default/files/CT/LivableWage/LivableWageOrdinance2014Revised.pdf>

END OF LIVEABLE WAGES ORDINANCE

COMPLIANCE WITH LIVABLE WAGE ORDINANCES: The Contractor shall comply with the Burlington Livable Wage Ordinance and shall provide the required certifications attesting to compliance with these ordinances (see attached ordinances and certifications).

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

I, _____, on behalf of _____ (Contractor) and in connection with _____ (City contract/project/grant), hereby certify under oath that (1) Contractor shall comply with the City of Burlington's Livable Wage Ordinance; (2) as a condition of entering into this contract or grant, Contractor confirms that all covered employees, as defined by Burlington's Livable Wage Ordinance, shall be paid a livable wage for the term of the contract as determined and adjusted annually by the City of Burlington's Chief Administrative Officer, (3) a notice regarding the applicability of the Livable Wage Ordinance shall be posted in the workplace or other location where covered employees work, and (4) payroll records or other documentation, as deemed necessary by the Chief Administrative Officer, shall be provided within ten (10) business days from receipt of the City's request.

Dated at _____, Vermont this ____ day of _____, 20__.

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary