

ADDISON COUNTY REGIONAL PLANNING COMMISSION AGREEMENT WITH TOWN OF MIDDLEBURY

Project: Bicycle and Pedestrian Planning Project

THIS AGREEMENT is made this 1st day of September, 2023, by and between the Addison County Regional Planning Commission (ACRPC) hereinafter referred to as “ACRPC” and the Town of Middlebury, a municipality in the state of Vermont hereafter referred to as “MUNICIPALITY”.

WHEREAS, ACRPC requests a written narrative and visual descriptions tying together maps, tables, and matrix of recommendations developed as part of the Middlebury Bicycle and Pedestrian Planning Project;

WHEREAS, federal funds may participate in the cost of the services described in this Agreement pursuant to the provisions of Title 23 Code of Federal Regulations, Chapter 1, Part 420, which is incorporated herein by reference, in the same proportion as Federal funds expended on the above-captioned project; and

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

NOW THEREFORE, in consideration of these premises and the mutual covenants herein set forth, the parties agree as follows:

1. SCOPE OF WORK

The MUNICIPALITY agrees to coordinate with ACRPC and various relevant stakeholders to provide the following deliverables:

1. Illustrative Exhibits – Prepare Project Exhibits (up to five) containing a map of the area of interest, cross-section illustration, and written description of recommended project components and cost estimates. These Exhibits will be added to the Appendix in the Middlebury Pedestrian Connectivity Plan.
2. Plan Narrative – A narrative will be prepared summarizing methodology and findings of the study. The Projects Matrix and Connectivity. The narrative will include mapping completed for the larger Middlebury Pedestrian Connectivity Plan as Appendices.
3. Traffic Signal and Crossings Recommendations – Gather data via field study and assemble comments on the existing crosswalk facilities.

2. BEGINNING AND END OF AGREEMENT AND TIME SCHEDULE FOR COMPLETION OF WORK

This Agreement shall be effective as of September, 2023.

The work shall be completed and the agreement shall end **no later than September 30, 2023**. During the contract period the MUNICIPALITY agrees that the work to be performed under the Agreement shall substantially adhere to the Work Schedule as set forth by the MUNICIPALITY, upon consultation with ACRPC officials. ACRPC will use this general work schedule to monitor the MUNICIPALITY.

3. THE AGREEMENT FEE

A. Rate Schedule. ACRPC agrees to pay the MUNICIPALITY at the end of project. **For any rates not specified the MUNICIPALITY shall request approval of the rates in writing prior to utilization or invoicing such rates.**

B. Maximum Limiting Amount. The total amount to be paid to the MUNICIPALITY for all services, including overhead shall not exceed a maximum limiting amount of **\$15,000.**

4. PAYMENT PROCEDURES

ACRPC shall make payments upon completion of the following deliverables as described in the Scope of Work:

Illustrative Exhibits	\$5,000
Plan Narrative	\$5,000
Traffic Signal and Crossings Recommendations	\$5,000

Invoices for work performed shall be submitted to Mike Winslow at Addison County Regional Planning Commission, 14 Seminary St., Middlebury, VT 05753, mwinslow@acrpc.org. Invoices shall reference the “*Middlebury Bicycle and Pedestrian Study*” for this project. ACRPC will pay invoices within 30 days of its receipt of said invoices. All payments made by ACRPC under this agreement will be made in reliance on the representations by the MUNICIPALITY, including, but not limited to bills, invoices, progress reports and other proof of work.

5. STATE AND FEDERAL REQUIREMENTS AND COVENANTS

A. General Compliance with the law. The MUNICIPALITY shall comply with all Federal, State and local laws and ordinances applicable to any of the work involved under this Agreement. The MUNICIPALITY shall also comply with all the federal requirements pertaining to the expenditure of federal funds.

B. Contracts in Excess of \$100,000. All Contracts in excess of \$100,000 shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulation (40 CFR Part 15), which prohibits the use under non-exempt Federal Contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The provisions shall require reporting of violations to the grant or Agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

C. Independent Contractor. MUNICIPALITY understands that it shall perform all work hereunder as an independent contractor. ACRPC will not provide any benefits, insurance or preferential tax treatment to the MUNICIPALITY. As such, the MUNICIPALITY shall be solely liable for all benefits, insurance and tax liability it incurs under the scope of this contract.

D. Workers Compensation. With respect to all operations performed, the MUNICIPALITY and its Sub-consultants shall carry worker’s compensation insurance in accordance with the laws of the State of Vermont. In addition, sole proprietors shall

demonstrate that they have taken out an adequate workers compensation policy on themselves. MUNICIPALITY shall provide ACRPC with a certificate of insurance demonstrating that they have procured worker's compensation insurance for all employees working under this agreement.

E. Subcontract and Procurement Procedure. The MUNICIPALITY agrees that it shall adopt procurement procedures for subcontracts or equipment purchases in accordance with applicable Federal and State laws and regulations and local ordinances. By signing this agreement, MUNICIPALITY certifies that all procurement shall be accomplished in accordance with these procedures.

F. Equipment Procurement. Subject to the obligations and conditions set forth in 49 CFR 18.32, title to equipment acquired under this Agreement will vest upon acquisition in ACRPC or MUNICIPALITY respectively as specified in this Agreement. The MUNICIPALITY shall follow the procurement procedures adopted under Paragraph e above and 49 CFR 18.36 for the acquisition of equipment, supplies and services. Disposition of equipment shall be subject to the conditions set forth in 49 CFR 18.32(e). Procurement of engineering and design related services shall be in accordance with Title 19, Part 10a, V.S.A., and Title 23, CFR, Part 172. When obtaining engineering and design related services, the MUNICIPALITY shall obtain the advance written approval of ACRPC, the State of Vermont and FHWA, as appropriate.

G. Civil Rights and Equal Employment Opportunity. During performance of the Agreement, the MUNICIPALITY will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, national origin, or physical disability. The MUNICIPALITY 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 MUNICIPALITY 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). The MUNICIPALITY shall comply with all the requirements of Title 21, V.S.A., 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.

H. DBE Obligation. ACRPC and its MUNICIPALITY's agree to ensure that DBE's as defined in 49 CFR □ Part 26 have the maximum opportunity to participate and perform as MUNICIPALITY's and sub-consultants financed in whole or in part with Federal funds. ACRPC and its MUNICIPALITY(s) shall not discriminate on the basis of race, age, color, religion, sex, national origin, physical disability, or veteran status in the award and performance of DOT assisted Agreements. ACRPC and MUNICIPALITY(s) shall initiate whatever procedures are required in accordance with 49 CFR □ Part 26 to insure that DBE's have the maximum opportunity to compete for and perform Agreements.

i. Sanctions for Noncompliance. The MUNICIPALITY is hereby advised that failure of a MUNICIPALITY or sub-consultant, performing work under the Agreement to carry out the DBE policy requirements established shall constitute a breach of the Agreement and may result in termination of the Agreement by ACRPC, or such remedy as ACRPC may deem appropriate.

ii. Inclusions in Subcontracts. The MUNICIPALITY shall insert these 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 sub-consultants 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 DBE policy shall not be incorporated by reference.

iii. Good Faith Effort for DBE. MUNICIPALITY must make good faith efforts to solicit available and capable DBE firms. Evidence of a good faith effort must be documented and maintained as part of the procurement process. A MUNICIPALITY's degree of effort, to include DBE firms as sub-consultants and suppliers shall be determined in accordance with standards promulgated by the Agency of Transportation.

I. Lobbying. The MUNICIPALITY certifies by signing this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

ii. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

iii. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

iv. This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

J. Insufficient State or Federal Appropriations. If this Agreement extends into more than one State of Vermont or Federal fiscal year, and if appropriations are insufficient to support this agreement, ACRPC may cancel this Agreement at the end of the State of Vermont or Federal fiscal year or otherwise upon the expiration of appropriations authority.

6. STATE REQUIREMENTS FOR SUB_CONTRACTS. - See Attachment C

7. GENERAL PROVISIONS.

A. Personnel and Subcontractors. MUNICIPALITY shall employ only qualified personnel, to carry out and supervise the work. MUNICIPALITY shall also be responsible for hiring the subcontractors referenced in Attachment B, supervising their work and ensuring their compliance with the terms of this agreement. ACRPC shall have the right to approve or disapprove key personnel and Subcontractors, and their personnel,

assigned to administer activities related to the Agreement.

B. Non-Assignability. MUNICIPALITY shall not assign, sublet, or transfer any interest in the work described by this Agreement without prior written consent of ACRPC, except to the MUNICIPALITY(s) referenced in Attachment B. The approval or consent to assign or sublet any portion of the work shall in no way relieve the MUNICIPALITY of responsibility for the performance of that portion of the work so transferred.

C. Available Data. ACRPC agrees to make available, at no charge, for the MUNICIPALITY's use all data related to the Agreement including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.

D. Ownership of Work. All data, documents or GIS spatial information produced under the terms of the Agreement, shall become the property of ACRPC and shall be treated by ACRPC as public information. The MUNICIPALITY agrees to allow access to all data and documents at all times. Upon completion of the project, MUNICIPALITY shall deliver 3 copies of any final report to ACRPC, including one unbound copy suitable for copying and one electronic copy of the report delivered in Adobe Acrobat and PDF format, with the text written in MS word on a zip disk or CD. All GIS data or other non-textual representations shall be compiled and delivered to ACRPC in Vermont State Planes Coordinates (NAD 1983 Meters). Data that is developed must follow all applicable published standards of the Vermont Geographic Information System (VGIS). Deliverables should be provided in ESRI Arcinfo "coverage" or Arcview "Shape" file format or in a format previously approved by ACRPC. All place or site related databases should include a valid 911 street address. The MUNICIPALITY shall not copyright any material originating under the Agreement without prior written approval of ACRPC.

E. Amendment. No changes or amendments of the Agreement shall be effective unless documented in writing and signed by authorized representatives of ACRPC and the MUNICIPALITY.

F. Completion and Acceptance. Upon completion of all services encompassed herein the payment of the agreed upon fee, this Agreement with its mutual obligations shall be terminated.

G. Settlement of Disputes/ Agreement to Arbitrate. The parties agree that they will attempt, in the first instance, to resolve any disputes that may arise under this Agreement by direct negotiations, with ACRPC represented by its Selectboard Chair or designee and MUNICIPALITY represented by its Project Manager. Should they fail to resolve outstanding problems, each may take appropriate action to terminate the contract pursuant to the paragraph immediately below. If either is aggrieved by the termination action of the other, the parties shall have recourse to mediation, arbitration, or other alternative dispute resolution device of their mutual selection. If the Parties cannot agree on an alternative dispute resolution device, arbitration shall be selected. Arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association unless otherwise agreed upon. The award rendered by any arbitrator or resolution reached in any alternative dispute resolution proceeding shall be final and binding and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. Any arbitration proceeding initiated

pursuant to this paragraph shall be held at a site reasonably agreed to by the Parties. The respective costs of each party for arbitration shall be borne by each party.

H. Termination. The Agreement may be terminated in accordance with the following provisions:

i. Mutual Consent. This Agreement may be terminated by mutual consent of ACRPC and the MUNICIPALITY subject to written termination conditions, including the effective date, and in the case of partial termination, the portion of the Agreement to be terminated.

ii. Termination for Cause. ACRPC reserves the right, upon written notice to the MUNICIPALITY, to terminate the Agreement, as of a date to be specified by ACRPC, if the MUNICIPALITY fails to complete the designated work to the satisfaction of ACRPC, within the time schedule agreed upon. The MUNICIPALITY shall be compensated on the basis of the work performed and accepted by ACRPC up to the date of termination of the Agreement pursuant to the terms of the notice above.

iii. Breach of Contract. ACRPC reserves the right to terminate the Agreement for breach of contract. Termination for breach of contract will be without further compensation to the MUNICIPALITY. Additionally, ACRPC may pursue other remedies available to it to including:

1. Withholding cash payments pending correction of the deficiency by the MUNICIPALITY;
2. Disallowing all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspending or terminating the current Agreement.
4. Withholding further awards for the MUNICIPALITY, or
5. Any other remedies that may be legally available pursuant to the arbitration noted above.

Costs of the MUNICIPALITY resulting from obligations incurred during a suspension or after termination are not allowable unless ACRPC expressly authorizes them in the notice of suspension or termination or subsequently. Other MUNICIPALITY costs during suspension or after termination which are necessary and not reasonably avoidable are allowed if the costs result from obligations which are properly incurred by the MUNICIPALITY before the effective date of suspension or termination.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photos and reports or other materials prepared by the parties under this Agreement shall become the property of ACRPC. The MUNICIPALITY and any subcontractor shall be entitled to receive just and equitable compensation for any said work completed prior to termination on such documents, data, studies, surveys, drawings, maps, models, photos and reports or other materials.

I. Governance. This Agreement shall be governed according to the laws of the State of Vermont.

J. Interpretation. The provisions of this Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the parties.

K. Severability. The invalidity of any paragraph of this agreement shall be treated

separately from all other paragraphs and shall not affect the validity of any or all other paragraphs.

L. 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.

THE PARTIES HERETO UNDERSTAND THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE. AFTER SIGNING THIS AGREEMENT, THE PARTIES UNDERSTAND THAT THEY WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THE ARBITRATION AGREEMENT UNLESS THE DISPUTE INVOLVES A QUESTION OF CONSTITUTIONAL OR CIVIL RIGHTS. INSTEAD, THE PARTIES AGREE TO SUBMIT ANY SUCH DISPUTE TO AN IMPARTIAL ARBITRATOR.

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

TOWN OF MIDDLEBURY (“MUNICIPALITY”)

BY: _____
Its duly authorized agent

ADDISON COUNTY REGIONAL PLANNING COMMISSION (ACRPC)

BY: _____
Executive Director

ATTACHMENTS:

Attachment A: Specifications for Contractor Services
Attachment B: MUNICIPALITY’s Certificate of Insurance