

# **TOWN OF MIDDLEBURY AGREEMENT WITH ADDISON COUNTY REGIONAL PLANNING COMMISSION FOR MUNICIPAL PROJECT MANAGEMENT CONSULTING SERVICES**

## **Project: Seymour Street and Pulp Mill Bridge Road Sidewalk Design and Construction**

THIS AGREEMENT is made this \_\_\_\_\_ day of March, 2015, by and between the Town of Middlebury, a Vermont municipality with a mailing address of 94 Main Street Middlebury, Vermont 05753 ("Municipality") and Addison County Regional Planning Commission a governmental organization with an address of 14 Seminary Street Middlebury, Vermont 05753 ("MPM").

WHEREAS, Municipality needs an administrator and municipal project manager ("MPM") to oversee a project involving the permitting, design and construction of improvements for a sidewalk on Seymour Street in the Town of Middlebury and Pulp Mill Road in the Town of Weybridge as detailed in the Enhancement Grant Application from the Town of Middlebury to VTrans and the contract from VTrans to the Town of Middlebury, Agreement #CA0428 and dated January 22, 2015 funding the design and construction of 2,700 linear feet of sidewalk along Seymour St in Middlebury and Pulp Mill Bridge Road in Weybridge, also referred to as Middlebury STP BP14(8) (the "Project").

WHEREAS, federal transportation funds will 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 MPM 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 MPM agrees to administer and act as the municipal project manager to oversee and complete the project described in VTrans Contract #CA0428 and the application supporting it as described above "(the Contract)". The scope of the project to be completed shall include those tasks described in the contract. As Project Manager, prior to construction of the above noted improvements, MPM shall hire and oversee a professional engineering firm to perform all work required in order for Municipality to receive authorization to commence and complete construction from the State of Vermont. MPM tasks shall include the following:

1. Responsibility for coordinating all project activities and monitoring all aspects of project development on behalf of the municipality while acting as liaison between the Municipality, VTrans, consultants and/or contractors as necessary. The MPM shall ensure adherence to federal and state rules and regulations relative to developing and constructing a project.
2. Meet with representatives of the Town of Middlebury, the Town of Weybridge and VTrans to document, define and confirm the scope of work and start the project;
3. Procure design services
  - a. Review and complete the draft RFP
  - b. Prepare and place advertisement
  - c. Review proposals
  - d. Host and conduct a selection committee meeting
  - e. Prepare a consultant contract.
4. Host and conduct a kick-off meeting
5. Host and conduct a Local Concerns meeting
6. Provide support to the consultant as needed to develop detailed plans and maps of the project area
7. Identify and review ROW issues for the project, if any, and after ensuring compliance with all applicable federal, state and local laws and regulations, forward the right of way documents to the State and securing a Right of Way Clearance Certificate
8. Review the National Environmental Policy Act (NEPA), environmental document Categorical Exclusion(CE) Environmental Assessment (EA), or Environmental Impact Statement (EIS), as it deems necessary, and create and forward an environmental document to the state for processing through the Federal Highway Administration(FHWA) to secure all necessary environmental permits or other documentation necessary to construct the project;
9. Identify and review utility and/or railroad issues for the project and after ensuring compliance with all applicable federal, state and local laws and regulations, secure a compliance certificate satisfactory to MUNICIPALITY and the State;
10. Oversee and aid the consultant in the Design of the project. Design shall include a purpose and needs statement, conceptual design plans and estimates, environmental documentation, right-of-way plans; and contract plans, including all specifications, contract documents and cost estimates.
11. Oversee and help Consultant prepare plans and documents necessary to meet the state and federal regulations for bidding to and hiring of contractors to perform the construction. MUNICIPALITY will award the construction contract to the lowest responsive, responsible bidder.
12. Review and approve invoices
13. Prepare reimbursement requests
14. Keep all administrative permitting and financial records of the project;
15. Closeout the project to the satisfaction of VTrans and Town of Middlebury.
16. All other responsibilities assigned to the Local Project Manager in Paragraph 6 of attachment A of the Municipality's agreement with the State of Vermont, #CA0428.

## **2. PROCESS SCHEDULE**

The MPM agrees that the work to be performed under the Agreement shall substantially adhere to the process schedule contained in the Local Transportation Facilities Guidebook and that the MPM will work as efficiently as possible within that process to move the project toward completion in a reasonable timeframe.

## **3. BEGINNING OF WORK**

This Agreement shall be effective as of March 18, 2015.

## **4. THE AGREEMENT FEE.**

Municipality agrees to pay the MPM at its audited rate including payroll, overhead and fixed fee rates as approved by the Vermont Agency of Transportation, plus expenses incurred directly as a result of this project. A copy of MPM's audited rates has been provided to the Municipality.

## **5. STATE AND FEDERAL CONTRACT REQUIREMENTS.**

The contract provisions contained in Appendix E of the State of Vermont Local Transportation Facilities Guidebook last revised August, 2014 and published on the Agency of Transportation website as of March 18, 2015 are attached hereto as **Exhibit 1** and hereby incorporated into the terms and conditions of this Agreement.

## **6. MISCELLANEOUS PROVISIONS**

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

B. 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.

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 ("MPM")**

**BY:** \_\_\_\_\_  
Executive Director

# Appendix E (Adapted to Municipal Project Management)

## MUNICIPAL PROJECT MANAGEMENT CONTRACT ATTACHMENT: CONTRACT PROVISIONS

### ***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 Municipal Project Manager agrees, to the fullest extent permitted by the law, that it shall indemnify and hold harmless the Municipality, its officers, agents and employees from liability for damages to third parties, together with costs, including attorneys fees, incurred in defending such claims by third parties, to the extent such liability is caused by the negligent or intentional acts, errors, or omissions of the Municipal Project Manager, its agents or employees, committed, in the performance of professional services to be provided by the Municipal Project Manager under this Agreement.

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

## ***2. INSURANCE***

**GENERAL:** Prior to beginning any work the Municipal Project Manager shall obtain Insurance Coverage as stated in the Request for Proposals. The certificate of insurance coverage shall be documented on forms acceptable to the Municipality. Evidence of compliance with minimum limits and coverages, demonstrated by a certificate of insurance showing policies and carriers that are acceptable to the Municipality, must be received prior to the effective date of the Agreement. The insurance policy (ies) shall provide that insurance coverage cannot be canceled or revised without fifteen (15) days' prior notice to the Municipality. In the event that this Contract extends to greater than one year, evidence of continuing coverage must be submitted to the Municipality on an annual basis. Certified copies of any insurance policies may be required. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Municipal Project Manager for the Municipal Project Manager's operations. These are solely minimums that have been developed and must be met to protect the interests of the Municipality.

**AUTOMOBILE LIABILITY:** The Municipal Project Manager 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

## ***3. COMPLIANCE WITH LAWS***

**GENERAL COMPLIANCE WITH LAWS:** The Municipal Project Manager 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. Section 1857(h)), Section 508 of the Clean Air Act (33 U.S.C. Part 1368), Executive Order 11738, and Environmental Protection Municipality regulation (40 CFR Part 15), that prohibit the use, under non-exempt Federal Contracts, grants or loans, of facilities included on the EPA list of Violating Facilities. The provisions require

reporting of violations to the grantor, Municipality and to the USEPA Assistant Administrator for Enforcement (EN-329).

**CIVIL RIGHTS and EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Agreement, the Municipal Project Manager 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 Municipal Project Manager 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 Municipal Project Manager shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulations 49 CFR Part 21 through Appendix C, and Regulations under 23 CFR Section 710.405 (b). Accordingly, all subcontracts shall include reference to the above.

The Municipal Project Manager 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 Municipal Project Manager certifies under the penalty of perjury as directed by Federal laws (48 CFR 52.209-5), that, except as noted in the Agreement, the Municipal Project Manager or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds:

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

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

Exceptions shall be noted in the Contract: **None.**

**LOBBYING:** For any Agreement exceeding one hundred thousand dollars, the Municipal Project Manager 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 sub awards at all tiers (including subcontractors, sub grants and contracts 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 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 Municipal Project Manager 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 Municipal Project Manager is a sole proprietorship, the Municipal Project Manager's statement applies only to the proprietor. If the Municipal Project Manager is a partnership, the Municipal Project Manager's statement applies to all general partners with a permanent residence in Vermont. If the Municipal Project Manager is a corporation, this provision does not apply.

**TAX REQUIREMENTS:** By signing the Agreement, the Municipal Project Manager 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 Municipal Project Manager 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:** If necessary, the Municipal Project Manager 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 Municipal Project Manager agrees to comply with the following provisions and certifies that he/she or they are in compliance with the provisions of 49 CFR Part 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 Municipal Project Manager 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 Municipal Project Manager agrees to comply with the Davis-Bacon Act 40 U.S.C. Section 276a to a-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 Municipal Project Manager agrees to comply with the Contract Working Hours and Safety Standards Act, 40 U.S.C. Section 327-330, as annexed by Department of Labor Regulations, 29 CFR Part 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 Municipal Project Manager. The Municipal Project Manager, however, agrees to and does hereby grant to the Municipality, the State of Vermont and the United States Government an irrevocable, nonexclusive, non-transferable, and royalty-free license to practice each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the Agreement.
- (e) Publications. All data, EDM, valuable papers and documents produced under the terms of the Agreement, shall become the property of the Municipality. The Municipal Project Manager agrees to allow access to all data, EDM, valuable papers and documents at all times. The Municipal Project Manager shall not copyright any material originating under the Agreement without prior written approval of the Municipality.

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

Except with the approval of the Municipality, during the life of the Agreement, the Municipal Project Manager shall not employ:

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

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

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

**TRANSFERS, SUBLETTING, ETC:** A Municipal Project Manager shall not assign, sublet, or transfer any interest in the work, covered by an Agreement, without prior written consent of the Municipality and further, if any subconsultant participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the Municipality. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the Municipal Project Manager 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 Municipal Project Manager and approved by the Municipality. The Municipal Project Manager shall ensure that adequate insurance coverage exists for any operations to be performed by any subconsultant.

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

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

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

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

**OWNERSHIP OF THE WORK:** The Municipal Project Manager agrees that project material, whether prepared or collected, shall become the property of the Municipality as they are prepared and/or developed during execution of the Agreement.

The Municipal Project Manager 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 Municipal Project Manager pursuant to the Agreement. Upon completion of the work, in full, these instruments of professional service will be appropriately endorsed by the Municipal Project Manager and turned over to the Municipality.

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

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

**APPEARANCES:**

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

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

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

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

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

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

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

**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 Municipal Project Manager. Any dispute arising from an administrative decision shall be appealed in writing within thirty (30) days of receipt.

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

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

- (a) Breach of Contract. Administrative remedies - the Municipality reserves the right to terminate a Contract for breach of Contract agreements. Termination for breach of Contract will be without further compensation to the Municipal Project Manager.
- (b) Termination for Cause. The Municipality reserves the right, upon written notice to the Municipal Project Manager, to terminate the Agreement, as of a date to be specified by the Municipality, if the Municipal Project Manager fails to complete the designated work to the satisfaction of the Municipality, within the time schedule agreed upon. The Municipal Project Manager shall be compensated on the basis of the work performed and accepted by the Municipality at the date of final acceptance of the Agreement.
- (c) Termination for Convenience. In addition to its rights and options to terminate an Agreement as provided herein, the Municipality may, at any time prior to completion of services specified under an Agreement, terminate the Agreement by submitting written notice to a Municipal Project Manager, within not less than fifteen (15) days prior to the effective date, via certified or registered mail, of its intention to do so. If the termination is for the Municipality's convenience, payment to the Municipal Project Manager 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 Municipal Project Manager prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Municipal Project Manager will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination, that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the Municipality's approval.

The Municipal Project Manager shall make no claim for additional compensation against the Municipality by reason of such termination.

## ***5. OPERATIONAL STANDARDS***

**RESPONSIBILITY FOR SUPERVISION:** The Municipal Project Manager shall assume primary responsibility for general supervision of Municipal Project Manager employees and his/her or their sub consultants 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 Municipal Project Manager shall act in an independent capacity and not as officers or employees of the Municipality.

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

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

The report shall indicate any matters that have or are anticipated to adversely affect progress of the work. The Municipality may require the Municipal Project Manager 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 Municipal Project Manager will counsel with the Municipality, 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 Municipal Project Manager shall inform the Municipality, 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 Municipal Project Manager will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Municipal Project Manager shall conduct themselves with propriety. The Municipal Project Manager 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 Municipality, in accordance with VSA Title 19 Part 35 and Part 503, in order to accomplish the work under the Agreement. The Municipal Project Manager agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the Municipal Project Manager, the Municipality shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Municipal Project Manager is acting as an agent of the Municipality.

**INSPECTION OF WORK:** The Municipality shall, at all times, have access to the Municipal Project Manager's work for the purposes of inspection, accounting, and auditing, and the Municipal Project Manager shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Municipal Project Manager shall permit the Municipality or representative for the Municipality the opportunity to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the Municipal Project Manager 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 Municipality, 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. PAYMENT FOR SERVICES RENDERED***

**PAYMENT PROCEDURES:** The Municipality shall pay, or cause to be paid to the Municipal

Project Manager or the Municipal Project Manager's legal representative, progress payments, that may be monthly or as otherwise accepted by the Municipality, as determined by the percentage of work completed, as documented by a progress report of such work duly attested, for each phase of the required services covered by the Agreement. When applicable, for the type of payment specified in the Agreement, the progress report shall summarize actual costs and any earned portion of fixed fee.

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 Municipality and must be accompanied with documentation to substantiate their charges.

Invoices shall be submitted to the Municipality; 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 Municipality agrees to pay the Municipal Project Manager and the Municipal Project Manager 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 Municipal Project Manager is responsible for furnishing the Municipality 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 Municipal Project Managers 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 Municipality may, upon written notice, and without invalidating the Agreement, require any changes to, additions to, or deletions from, the originally contemplated extent of the work, prior to completion of the Agreement by means of an amendment to the original contract. Any adjustments of this nature shall be executed under the appropriate fee established in the Agreement, based on the adjusted quantity of work, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such addition or deletion.

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

The value of such changes, to the extent not reflected in other payments to the Municipal Project

Manager, shall be incorporated in an amendment and be determined by mutual agreement, in one or more of the following ways:

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

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

The Municipal Project Manager agrees to maintain complete and accurate records, in a form satisfactory to the Municipality for all time devoted directly to same by Municipal Project Manager employees. The Municipality reserves the right to audit the records of the Municipal Project Manager 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 Municipal Project Manager until an Agreement amendment has been fully executed, unless written notice to proceed is issued by the Municipality. Any claim for extension of time that may be necessitated as a result of extra work or additional services and changes, shall be given consideration and evaluated insofar as it directly relates to the change.