

TOWN OF BRISTOL, VT

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES with DuBOIS & KING, INC. For the Main Street Lighting and Sidewalk Improvements Design

THIS AGREEMENT is made this 18th day of February, 2019, by and between the Town of Bristol, VT, hereinafter referred to as the TOWN, and DuBois & King, Inc., a Vermont corporation with its place of business at 28 North Main Street, Randolph, Vermont, 05060, hereinafter referred to as the CONSULTANT.

The TOWN wishes to employ the CONSULTANT for the purpose of providing Professional Engineering Services for the Main Street Lighting and Sidewalk Improvements Design.

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

NOW THEREFORE, in consideration of these premises and the mutual covenants herein set forth, it is agreed by the parties hereto as follows:

1. SCOPE OF WORK

The CONSULTANT shall provide Professional Engineering Services to complete the Main Street Lighting and Sidewalk Improvements Design as set forth in the Scope of Work (Attachment A); the Consultant's Cost Proposal (Attachment B); and the Standard State Provisions (Attachments C and D); all of which are incorporated herein and made a part of this Agreement.

2. BEGINNING OF WORK AND TERMINATION

This Agreement shall be effective February 18th, 2019 and shall be completed on or before December 31, 2019 unless otherwise agreed in writing.

3. THE AGREEMENT FEE

- A. General. The TOWN agrees to pay the CONSULTANT and the CONSULTANT agrees to accept as full compensation for the performance of all services and expenses encompassed under this Agreement, the cost to the CONSULTANT in accordance with the CONSULTANT'S Cost Proposal in Attachment B.

- B. Maximum Limiting Amount. The total amount to be paid to the CONSULTANT shall not exceed Thirty-Seven Thousand Nine Hundred Fifty-Two Dollars and No Cents (\$37,952.00), unless amended by the mutual agreement of the TOWN and the CONSULTANT.

4. PAYMENT PROCEDURES

Invoices shall be submitted to Valerie Capels, Town Administrator, Town of Bristol, P.O. Box 249, Bristol, VT 05443 at an interval not to exceed once per month. The TOWN agrees to pay the invoices within 30 days of receipt.

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

DuBOIS & KING, INC.

By: _____

Title: _____

TOWN OF BRISTOL

By: _____

Valerie Capels

Title: Town Administrator

Scope of Work

Our proposed scope of work for the development of the municipal lighting and sidewalk improvements design is outlined below, and generally follows the scope of services requested in the RFP.

Task 1 – Kickoff Meeting & Site Visit

Upon receiving a notice to proceed, D&K will arrange a kickoff meeting and site visit in Bristol to discuss the process to be followed during project development with Town staff and other stakeholders with input on existing conditions and design options. This will be an opportunity to discuss the project schedule and deliverables, review the project development process, exchange contact information, and collect information that has not already been gathered. D&K Lead Engineer and Point of Contact Jeremy Stephens, PE, joined by Senior Electrical Engineer Bob Kischko, PE, to take notes and prepare meeting minutes to be submitted to the Town for accuracy. The D&K team will also use the site visit to identify any additional appurtenances that need to be surveyed.



After the kickoff meeting, D&K anticipates weekly conference calls with Town officials so that progress can be tracked, issues identified and resolved, and project momentum continued.

Task 2 – Field Reconnaissance

The primary purpose of this phase is to collect additional information needed to by the D&K team to bring the project to successful completion.

2A - Topographic Survey

D&K already has most of the topographic survey complete through the Route 116 resurfacing project, and do not expect to spend more than a couple days to convert the collected data into AutoCAD format. This work will be lead by D&K Senior Land Surveyor Randy Otis, LS, and will be performed with little impact to downtown. The AutoCAD file will be delivered to our design team to begin development of the base plan, evaluation of existing conditions, and options to be considered for design.

2B - Electrical Investigation

During the field reconnaissance task, D&K Electrical Designer Sylvia Miller will investigate the existing lampposts, electrical service tie-ins to the lampposts, and electrical service tie-ins to the primary electrical

distribution. This information will be used to develop lamppost restoration, replacement, products, and electrical service alternatives to be considered for design.

D&K will make contact with the appropriate utility owners to locate existing utilities within the project area. D&K team member will request available information, including record drawings, sketches, as-built, etc. If the team determines that the available information is inadequate to analyze conflicts, field work may need to be coordinated with the existing utility owners to verify locations.

Task 3. Preliminary Plans

Through steady communication of findings, products, and design alternatives, D&K will develop preliminary plans. These plans will be based on Town and stakeholder preferences, and D&K recommendations that are accepted by the Town. D&K will rely on Town and stakeholders to approve the preliminary plans before D&K makes a public presentation.

D&K assumes that one meeting with the Town and stakeholders (e.g. Bristol CORE) will be required to review findings, products, and design alternatives.

D&K will develop the design and prepare plans anticipated to consist of:

- Title Sheet
- Index of Sheets
- Conventional Symbolology and Legend Sheet
- Typical Section Sheets
- Detail Sheets
- General Notes
- Sidewalk Layout Sheets
- Sidewalk Details
- Utility Sheets
- Erosion Prevention and Sediment Control (EPSC) Sheets
- EPSC Legend and Notes Sheets
- EPSC Detail Sheets
- Traffic Control Sheets
- Construction limits
- Existing utilities
- Proposed utilities
- Proposed lamppost modifications
- Pavement marking and signing information

D&K will provide an Engineer's Opinion of Probable Construction Cost (EOPCC) that reflects the level of detail in the Preliminary Plans. Pay item quantities will be measured and developed based on VTrans standard procedures and items. Any items not defined under a VTrans standard item will be categorized as a Special Provision Item. Quantities will also be based on the preliminary plans.

This task will have participation from each civil and electrical D&K staff member listed, with general oversight provided by D&K Project Manager/Principal Engineer David Conger, PE, and QA/QC provided by Senior Transportation Engineer Chris Lathrop, PE.

Task 4. Public Meetings

4A - Selectboard Meeting

At the finalization of the preliminary plans and approval of the Town, D&K's Lead Civil Engineer Jeremy Stephens, PE, and Senior Electrical Engineer Bob Kischko, PE, will prepare and present the preliminary plans during a public meeting, which may be as part of a regular or special Selectboard meeting. The D&K team will also record comments received at the meeting and present them as minutes to the Town for further consideration. Team members will follow up with any question not answered during the public meeting.

4B - DRC Meeting

After incorporating public comments from the Selectboard meeting, Jeremy and Bob will prepare and present the preliminary plans to the Bristol Design Review Commission (DRC). They will again record comments received and present them as minutes to the Town for further consideration. D&K team members will follow up with any question not answered during the DRC meeting.

Task 5. Task 5. Permitting

D&K will begin the permitting processes upon incorporation of all public, Town, and stakeholder comments into the preliminary plans. At this time the D&K anticipates that a Construction Permit Application through the Vermont Department of Public Safety, Division of Fire Safety is the only permit needed. Accessibility will be discussed with Department of Public Safety during preliminary design and is not expected to require significant time during this task. Electrical or plumbing should not require permitting or inspection as long as designed and installed by licensed professionals. Permitting will be lead by Lead Civil Engineer Jeremy Stephens, PE, with preliminary plan document assistance from D&K Civil Designer Pat Day, EI.

Task 6. Final Design

Upon completion and receipt of necessary permits and clearances, Final Design will begin, including:

6A - Final Plans

D&K will prepare the Final Plans to address all comments received from meetings and permit processes. The Final Plans will include the sheets from the preliminary plan submission, unless omitted or added to during previous reviews. This work will have participation from each civil and electrical D&K staff member listed, with general oversight provided by Project Manager/Principal Engineer David Conger, PE, and QA/QC provided by Senior Transportation Engineer Chris Lathrop, PE.

6B - Final EOPCC

The D&K team will review the EOPCC as part of the final plan development. The EOPCC will be revised to reflect the additional level of project detail and the revisions made after the development of the final plans. D&K

will measure and recalculate pay item quantities based on VTrans standard procedures and items. Any items not defined under a VTrans standard item will be categorized as a Special Provision Item. Changes to the final plans, either through utility coordination or Town/public comments will result in modifications to the items and quantities.

6C - Draft Contract Documents

D&K team members will prepare draft contract documents for the project, including:

- Bidding Requirements
- Contract Forms
- Specifications (VTrans Standard Specifications for Construction, 2011 Edition)

The draft contract documents will be based on the standard documents that VTrans uses for their municipally-managed projects and can be augmented as required by the Town. Other document examples may be used if preferred.

6D - Final Construction Documents

Once the final plans, draft contract documents, and EOPCC have been reviewed and approved by the Town, D&K will address any final design review comments. The team will finalize construction documents that will be used by the Town to advertise and procure contractor services to construct the project. The final construction documents will include the final permits, clearances, and any other items necessary.

6E - Bid Phase Services

D&K Lead Civil Engineer Jeremy Stephens, PE, and Senior Electrical Engineer Bob Kischko, PE, will remain available for questions received during advertising for construction bids. Jeremy will also be available to assist the Town by preparing a bid tabulation and Recommendation of Award letter based on the results of D&K's bid analysis.

With assistance from the Town, D&K will lead a non-mandatory pre-bid site visit, prepare notes, and distribute any follow-up information to prospective bidders.

Task 7. Construction Phase

Construction phase services will be added to the agreement, via contract amendment, at a later date.

7A - Construction Management & Inspection

D&K will review the Contractor's proposed project schedule and schedule of values. Any aspect that D&K deems questionable will be brought to the attention of the Town.

D&K proposes to inspect work in the field at least once each day construction activities occur. We will request Town approval before making adjustments to this schedule. Inspections activities will include, updating record drawings, tracking work completed, and documenting any issues.

Payment requisitions or change orders will be reviewed by D&K, with recommendations to either provide payment or provide further clarification from the contractor.

D&K Lead Civil Engineer Jeremy Stephens, PE, and Senior Electrical Engineer Bob Kischko, PE, will remain available provide assistance throughout the construction phase, including answering questions relative to the

design and participating in decisions relative to field changes. Any questions not immediately answered via phone or email will be followed up shortly after all information is presented.

D&K will review and approve shop drawings required for the project. This may entail reviewing concrete pedestals, traffic control plans, or lamppost products. The intent will be to review the submittal for general conformance with the design intent.

D&K will continue to facilitate weekly scheduled project meetings during construction. Progress of work, payment of work performed, any issues requiring resolution and any other items deemed appropriate by those in attendance will be discussed. At the conclusion of each weekly meeting, minutes will be prepared for the Town to review and approve.

The majority of the construction management and inspection tasks are expected to be carried out by a Construction Inspector. We have breadth at this position and intend to use one of several options throughout the project in order to save costs to the Town while providing the best possible feedback. D&K Senior Transportation Engineer Chris Lathrop, PE, will be available to coordinate with the ongoing Route 116 resurfacing project.

7B - Substantial Completion Inspection

D&K Lead Civil Engineer Jeremy Stephens, PE, and Senior Electrical Engineer Bob Kischko, PE, will conduct a site visit following substantial completion of the construction. Chris Lathrop will also join to make sure that there are no outstanding concerns for the adjacent Route 116 resurfacing project. During the site visit D&K will observe the work, take notes of remaining work to be completed, and compare the construction against the contract plans. Any work that appears unacceptable will be brought to the attention of the Town, with recommendation that the Town not accept the work. Work still needing to be completed and unacceptable work will be compiled into a punch list.

7C - Final Inspection

D&K will conduct a follow up final inspection to check that items noted on the punch list have been completed. Our team anticipates that the contractor will have addressed all items on the punch list by this time and no additional inspections will be necessary. Jeremy Stephens will perform the final inspection and will develop a Notice of Final Completion memorandum recommending to the Town that final payment should be authorized.

7D - Record Drawings

Upon recommendation for final payment to the contractor, Jeremy Stephens and Pat Day will finalize the record drawings and submit to the Town for approval and project completion.

Town of Bristol
Main Street Lighting & Sidewalk Improvements Design
Project No.: 425097X



Project Phases & Tasks						Labor Categories					Total Hours
		Principal	Lead Senior Civil Engineer	Senior Electrical Engineer	Civil Designer	Electrical Designer	Land Surveyor	Land Survey Technician	QA/QC Engineer	Const. Inspector	
Task 1	Project Kick-Off & Site Visit										
A.	Meet with Town & Stakeholders		4	4							8
B.	Site Visit with Town & Stakeholders		4	4							8
Task 2	Field Reconnaissance										
A.	Topographic Survey						20	10			
B.	Electrical Investigation					8					8
Task 3	Preliminary Plans										
A.	Findings, Products, & Design Alternatives	1	3	1	8	8			1		22
B.	Plan Preparation & Review	1	10	10	72	72			1		166
C.	EOPCC Preparation & Review		1	1	4	2					8
Task 4	Public Meetings										
A.	Selectboard Meeting		4	1							5
B.	DRC Meeting		4	1							5
Task 5	Permitting										
A.	Construction Permit Application (VT Dept. of PS)		1		4						5
Task 6	Final Design										
A.	Final Plans	1	8	8	56	56			1		130
B.	Final EOPCC		1	1	4	2					8
C.	Draft Contract Documents		1		2						3
D.	Final Construction Documents		1		1						2
E.	Bid Phase Services		2	2							4
Task 7	Construction Phase	Construction phase services will be added to the agreement, via contract amendment, at a later date.									
A.	Construction Management & Inspection										0
B.	Substantial Completion Inspection										0
C.	Final Inspection										0
D.	Record Drawings										0
Total Hours:		3	44	33	151	148	20	10	3	0	382

Town of Bristol
Main Street Lighting & Sidewalk Improvements Design
 Project No.: 425097X



Project Phases & Tasks						Labor Categories					
			Lead Senior Civil Engineer	Senior Electrical Engineer	Civil Designer	Electrical Designer	Land Surveyor	Land Survey Technician	QA/QC Engineer	Const. Inspector	Total Hours
		Principal									
Direct Labor	Total Hours:	3	44	33	151	148	20	10	3	0	382
	Hourly Rate:	\$140.00	\$120.00	\$120.00	\$80.00	\$80.00	\$98.00	\$65.00	\$130.00	\$100.00	
	Labor Cost:	\$420	\$5,280	\$3,960	\$12,080	\$11,840	\$1,960	\$650	\$390	\$0	\$36,580
Direct Expenses (see next tab for billing rates)											
I. Subsistence											
Transportation:		Vehicles	1,250	Miles @	\$0.580	/ Mile =	\$725				
		Travel-Air / Ground / Parking Allowance =				\$0					
Meals:		Partial Per Diem	0	Days @	\$6.00	/ Day =	\$0				
		Full Per Diem	0	Days @	\$25.00	/ Day =	\$0				
Rooms & Lodging:		Hotel	0	Days @	\$70.00	/ Day =	\$0	Subsistence Total =		\$725	
II. Support Expenses											
						Telephone / Fax =	\$0				
						Postage =	\$0				
						Reproduction =	\$100				
						Copying =	\$100	Support Total =		\$200	
III. Subcontractors											
						Survey & Topgraphic Survey	\$0				
						Hydrogeology Study	\$0	Subcontractor Total =		\$0	
IV. Miscellaneous Expenses											
						Survey Robot/GPS =	\$250				
						Plotting Charges =	\$50				
						Special Equipment =	\$0				
						Miscellaneous =	\$0	Miscellaneous Total =		\$300	
						Total Direct Expenses =		\$1,225			
						Administrative Fee =		\$147			
						Total Cost =		\$1,372			
Cost Summary											
				Labor Cost	\$36,580						
				Direct Expenses	\$1,372						
				Total Price	\$37,952						

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 et seq. If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any 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.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and

liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds

become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

Attachment D

Standard State Provisions

Architect/Engineer Professional Service Agreement

Attachment C, Paragraphs 6 and 7 are deleted in its entirety and replaced with the following:

6. Independence, Liability, Indemnity:

- A. The Party will act in an independent capacity and not as officers or employees of the State.
- B. This Agreement requires the Party to provide professional services in the design and/or engineering of all or a part of the Project to which this Agreement relates. This is not an Agreement for construction services. However, construction administration, observation or certification services may be required on the part of the Party if this Agreement so provides. Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for all services performed under this Agreement, with minimum coverage as required by the Agency of Administration but not less than \$1,000,000 per claim and \$2,000,000 policy aggregate.
- C. The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in providing "non-professional services" under this Agreement. As used herein, "non-professional services" means services provided under this Agreement other than professional services relating to the design and/or engineering of all or part of the project. The State shall notify the Party in the event of any such claim or suit covered by this Subsection C, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit arising out of "non-professional services" provided under this Agreement.
- D. Notwithstanding anything to the contrary set forth in Subsection C above, the Party shall not be obligated to defend the State and its officers and employees against claims or suits arising from the Party's provision of engineering design services or architectural design services. However, the Party's obligation to defend the State and its officers and employees against all claims or suits arising out of "non-professional services" provided under this Agreement as provided in Subsection C above and the Party's other obligations under Attachment C shall remain in effect.
- E. The Party agrees to indemnify and hold the State, its officers and employees, harmless from and against monetary damages to third parties, together with reasonable costs, expenses and attorney's fees incurred and paid by the State in defending claims by third parties (collectively "Damages") but only in the event and to the extent such Damages are incurred and paid by the State as the proximate cause of negligent acts, errors or omissions ("Professional Negligence") by the Party, its employees, agents, consultants and subcontractors, in providing the professional services required under this Agreement.

F. As used herein, "Professional Negligence" or "negligent acts, errors or omissions" means a failure by the Party to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or similar conditions and circumstances.

G. The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party arising from the provision of "non-professional services" (as defined herein) under this Agreement.

H. The Party shall not be obligated to indemnify the State for any Damages incurred by the State attributable to the State's own negligent acts, errors or omissions or the negligent acts, errors or omissions of its officers, agents or employees, or the acts, errors, omissions or breach of Agreement by persons or entities other than the Party, its employees, agents, consultants and subcontractors.

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