

TOWN OF EAST MONTPELIER CONTRACT FOR SERVICES

This Contract is entered into this _____ day of _____, by and between the Town of East Montpelier, Vermont (hereinafter the "Town") and _____ with a principal place of business at _____ (hereinafter "Contractor"). The Town and Contractor are referred to collectively as "parties."

In consideration of the mutual covenants and agreements, as hereinafter set forth, the parties hereto agree as follows:

1. SERVICES PROVIDED

A. Contractor agrees to perform the following services:

See Addendum A.

B. The Contractor shall perform all services required under this Contract in a good, workmanlike manner consistent with industry standards and the specifications and performance standards established by the Town.

C. The Town has the right to inspect and may reject any services provided by the Contractor under this Contract that, in the Town's determination, are not completed in a good and workmanlike manner or that otherwise fail to satisfy the established specifications or performance standards.

2. COMPENSATION AND BILLING

A. In consideration of the services provided hereunder, the Town agrees to pay the Contractor the sum of _____ as follows:

B. No payment made under this Contract shall be conclusive evidence of the performance of said Contract, either wholly or in part, and no payment shall be construed to be acceptance of defective work.

3. TERM

A. The services to be performed by Contractor under this Contract shall commence on _____, 2024 and shall be completed on ____, 2024, unless this Contract is sooner terminated.

B. Upon completion of all the services required under the Contract and payment of the agreed-upon fee, the Contract and its mutual obligations shall be terminated. The term of this Contract may be extended only by written agreement of the parties.

4. INDEPENDENT CONTRACTOR

A. Contractor acknowledges and agrees that Contractor and Contractor's employees, agents, servants, and other personnel are not Town employees. Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, and all other compensation or benefits to Contractor's employees, agents, servants and other personnel performing the service specified herein.

B. It is expressly understood and agreed that for such purposes, neither Contractor nor Contractor's employees, agents, servants, or other personnel shall be entitled to any Town payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

5. ASSIGNMENT AND SUBCONTRACTING

A. This Contract is binding upon and inures to the benefit of the successors and assigns of the parties hereto.

B. This Contract shall be governed by the laws of the State of Vermont without reference to principles of conflicts of laws. The Courts of the State of Vermont shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Contract.

C. Contractor shall not enter into any subcontract for the performance of any services contemplated under this Contract nor assign any interest in the Contract without the prior written approval of the Town and subject to such conditions and provisions as the Town may deem necessary or desirable in its sole discretion. If the Town permits the use of subcontractors, no subcontractor may perform any work under this Contract without first providing the Town certificates of insurance showing all of the coverages required in Section 10 of this Contract.

D. Contractor shall be responsible for the performance of all subcontractors. Before paying a claim that involves the use of materials or labor supplied by someone other than the Contractor, the Town may require Contractor to supply proof of payment for such materials or labor. Contractor shall pay the subcontractor(s) for undisputed services provided by them within ten days of receiving payment from the Town.

6. EQUIPMENT AND MATERIALS

A. Contractor warrants that it has the necessary equipment to provide the services required by this Contract. All materials used or supplied under this Contract shall be of first quality and meet the specifications established by the Town. Contractor will be solely responsible for supplying, storing, maintaining, and replacing any equipment necessary for implementing the services under this Contract.

7. PERSONNEL

A. Contractor is responsible for compliance with all applicable Local, State, and Federal laws. Contractor will manage its personnel without general oversight by the Town and shall oversee and coordinate sub-contractors that the Town approves.

B. Contractor alone shall be responsible for ensuring compliance with all applicable regulatory requirements including but not limited to the Vermont Occupational Safety and Health Administration (VOSHA). Contractor further agrees to include this provision in all subcontracts.

C. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of race, color, gender, sexual orientation, religion, creed, national origin, ancestry, age, marital status, or disability.

8. SAFETY AND TRAFFIC CONTROL

A. The Contractor alone shall be responsible for safety and security in the performance of the work under this Contract.

B. If work under this contract involves traffic control, Contractor is solely responsible for such traffic control, which practices shall comply with the Manual on Uniform Traffic Control Devices, latest edition.

B. If work under this Contract involves subsurface excavation, Contractor shall contact Dig Safe before any excavation. No excavation is authorized until after Dig Safe has marked all existing utilities. Before construction, the Contractor shall notify the Town of adjacent utilities when prosecution of work may affect them.

9. INDEMNIFICATION

A. Contractor shall indemnify and hold harmless the Town and the Town's officers, agents, volunteers, and employees from and against all losses and all claims, demands, payments, suits, actions, recoveries, claims of outstanding indebtedness, attorneys' fees, liens, and judgments of every nature, and description brought or recovered against them by reasons of any act or omission of the said Contractor, its agents, employees, or sub-contractors, in the performance of the services under this Contract. Contractor shall defend the Town and its officers, agents, volunteers, and employees against all claims or suits arising in whole or in part from any act or omission of Contractor or any agent or subcontractor of Contractor. The Town shall notify Contractor in the event of any such claim or suit, and Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. Notwithstanding any contrary provision hereof, all of the rights and obligations of this paragraph A of Section 9 shall survive expiration or termination (for any reason) of this Contract and remain in full force and effect.

B. Contractor shall assume full responsibility for protecting all buildings, structures, and utilities (both public and private). All damage, injury, or loss to any public or private property by the Contractor or any subcontractor shall be replaced or restored to at least the original condition to the satisfaction of the Town at the Contractor's expense.

C. Nothing in this Contract shall constitute a waiver by the Town of any statutory limits or immunities from liability.

10. INSURANCE

A. Before commencing work on this Contract, the Contractor must provide certificates of

insurance to show that the following minimum coverages are in effect. Contractor agrees that it will provide and maintain during the entire term of this Contract the following insurances with at least the indicated amounts of coverage and provide the Town a certificate of insurance showing such coverages before providing any services under this Agreement: (1) Commercial General Liability insurance coverage with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 in aggregate; (2) Business Automobile Liability coverage with total liability limits of at least \$1,000,000; and (3) Statutory Workers' Compensation insurance. The Contractor's policies shall name the Town as an additional insured.

B. If Contractor is not required by law to carry workers' compensation insurance, in place of proof of workers' compensation insurance Contractor shall provide a fully executed Non-Employee Work Agreement specifying the particular provision of 21 V.S.A §601(14)(F) that exempts Contractor from having to carry such coverage.

11. NON-APPROPRIATION

A. If this Contract extends into more than one fiscal year of the Town and if appropriations are insufficient to support this Contract, the Town may cancel at the end of the fiscal year. In the case that this Contract is a Grant that is funded in whole or in part by Federal or State funds, and in the event Federal or State funds become unavailable or reduced, the Town may suspend or cancel this Grant immediately, and the Town shall have no obligation to pay Contractor from municipal funds.

12. TERMINATION

A. The Town may terminate this Contract, with or without cause, upon ten days' written notice.

13. DEFAULT

A. The occurrence of any of the following shall constitute a default by Contractor and, if not corrected within ten days of the Town providing Contractor written notice of the default, shall allow the Town to terminate this Contract:

- (1) failure to adequately perform or deliver the required services;
- (2) if applicable, failure to provide the required bonds or other security acceptable to the Town before starting any work;
- (3) declaration of bankruptcy by Contractor;
- (4) making a material misrepresentation to the Town;
- (5) violation of any laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
- (6) failure to perform any material provision of this Contract.

B. Upon default of this Contract by Contractor, the Town may withhold any payment due Contractor for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute default or failure to perform on the part of the Town.

C. Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to any of the following Uncontrollable Circumstances unless the act or

occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, acts of public authorities, or delays or defaults caused by public carriers; provided the non-performing party gives notice as soon as possible to the other party of the inability to perform. The Town and the Contractor agree to attempt to resolve all matters related to uncontrollable circumstances promptly and use all reasonable efforts to mitigate its effects.

D. In addition to the above, in the event of a State or Federal Disaster Declaration, the Town reserves the right to suspend specific provisions of this Contract to conform with FEMA or Vermont Emergency Management regulations and directives.

E. Upon completion of the work or termination of the Contract, Contractor shall remove from the vicinity of the work all equipment and all temporary structures, waste materials, and rubbish resulting from its operations, leaving the premises in a neat and presentable condition. In the event of failure to do so, the Town may do the same at the expense of the Contractor.

15. REMEDIES

A. Default or breach of this Contract by Contractor shall entitle the Town to seek remedies under law and as provided by this Contract. If this Contract is terminated because of default by Contractor, the Town may recover the necessary costs of termination, including but not limited to, administrative, attorneys' fees and legal costs, from Contractor.

B. Except when caused by Uncontrollable Circumstances, if Contractor fails to meet any performance deadlines established by this Contract or fails to perform in accordance with the specification, terms, and conditions of this Contract, the Town shall have the right to purchase replacement services and materials from other sources on the open market or to purchase those items necessary to continue functioning until delivery from Contractor is complete.

C. The Town may deduct as damages from any money due or coming due to Contractor the differences between Contractor's price and the higher price or the costs of replacement services and materials. The Town may require Contractor, at Contractor's sole expense, to re-perform any items of work provided for in this Contract that do not meet the established specifications, standards, or Town directives.

D. Any remedies available to the Town are cumulative and not exclusive. The seeking or exercising by the Town of a remedy does not waive its right to seek or exercise any other remedy available to it at law, in equity, by statute, or under this Contract.

16. CONTRACT DOCUMENTS

A. This Contract shall constitute the entire agreement between the parties on the subject matters. All prior agreements, representations, statements, negotiations, and understandings shall have no effect. There shall be no modifications or amendments to this Contract unless said changes, modifications, or amendments are in writing duly executed by the parties.

17. PERFORMANCE AND PAYMENT BONDS

A. Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the State of Vermont. Each bond shall be in an amount equal to the contract price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect not less than one year after the date when final payment becomes due.

18. SEVERABILITY

A. The provisions of this Contract are severable. If a court of competent jurisdiction holds any portion of this Contract unconstitutional or invalid, the remainder shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties do hereby execute this Contract on the day and year first written above.

TOWN OF EAST MONTPELIER, VERMONT

By: _____
Jennifer Devine, Town Administrator

CONTRACTOR

By: _____
Duly Authorized Agent