

Town of Milton Standard Contract Terms and Conditions

The following provisions constitute the “short form” version of the Town of Milton’s Specifications for Consultant/Contractor Services. References herein to this “Agreement” shall refer to the contract or agreement into which the Town has entered as a party and to the Specifications contained herein. In the event of any alleged conflict between the contract document and these Specifications, the contractor shall immediately bring the alleged conflict to the attention of the Town for resolution.

Section 1: INDEMNIFICATION

1.01 INDEPENDENCE, LIABILITY.

The Contractor agrees, to the fullest extent permitted by the law, that it shall indemnify and hold harmless the Municipality, its officers, agents, employees, board members, attorneys and volunteers from liability for damages to third parties, together with costs, including attorney’s 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 Contractor, its agents or employees, committed in the performance of professional services to be provided under this Agreement.

The Municipality is responsible for its own actions. The Contractor is not obligated to indemnify the Municipality or its officers, agents, employees, board members, attorneys and volunteers for any liability of the Municipality, its officers, agents, employees, board members, attorneys or volunteers attributable to its, or their own, negligent acts, errors or omissions.

In the event the Municipality, its officers, agents, employees, board members, attorneys and volunteers are notified of any claims asserted against it or them to which this indemnification clause may apply, the Municipality or its officers, agents, employees, board members, attorneys and volunteers shall immediately thereafter notify the Contractor in writing that a claim to which the indemnification agreement may apply has been filed.

Section 2: INSURANCE

2.02 GENERAL.

Prior to beginning any work pursuant to a contract, the Contractor shall have the required insurance coverages in place. The certificate(s) of insurance coverage shall be documented on forms acceptable to the Municipality. Compliance with minimum limits and coverages, evidenced 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 contract. The insurance policy(ies) shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the Municipality. If the contract is for a period 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. Each policy shall name the

Municipality as an additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.

The contractor shall:

- (a) Verify that all subcontractors, agents or workers meet the minimum coverages and limits;
- (b) Maintain current certificates of coverage for all subcontractors, agents and/or workers;
- (c) Where appropriate, verify that all coverages include protection for activities involving hazardous materials; and
- (d) Verify that all work activities related to the contract are covered with at least the following minimum coverages and limits.

2.03 WORKERS' COMPENSATION.

Minimum limits for Employer's Liability:

- (a) Bodily Injury by Accident: \$500,000 each accident
- (b) Bodily Injury by Disease: \$500,000 policy limit, \$100,000 each employee

2.04 AUTOMOTIVE LIABILITY.

The Contractor 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: \$1,000,000 combined single limit. The Contractor shall name the Municipality and its officers and employees, as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement. No warranty is made that the coverages and limits required are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that must be met to protect the interests of the Municipality.

2.05 GENERAL LIABILITY AND PROPERTY DAMAGE.

With respect to all operations performed by the Consultant, sub-consultants, agents or workers, it is the Consultant's responsibility to ensure that general liability insurance coverage provides all major divisions of coverage including, but not limited to:

1. Premises Operations

2. Independent Contractors' Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Contractual Liability
6. Broad Form Property Damage
7. Medical Expenses
8. Collapse, Underground and Explosion Hazards

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

\$1,000,000	Per Occurrence
\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal & Advertising Injury
\$ 250,000	Fire Damage
\$ 50,000	Legal/Liability
\$ 5,000	Medical

The Contractor shall name the Municipality and its officers and employees, as additional insured for liabilities arising out of the contractor's actions, errors, and/or omissions under this agreement.

Section 3: COMPLIANCE WITH LAWS

3.01 APPLICABLE LAW.

This Agreement will be governed by the laws of the State of Vermont.

3.02 GENERAL COMPLIANCE WITH LAWS; RESPONSIBILITY FOR VIOLATION.

The contractor shall observe and comply with all federal, state, and municipal laws, bylaws, ordinances, and regulations in any manner affecting the conduct of the work and the action or operation of those engaged in the work, including all such orders or decrees as exist at present and those which may be enacted, adopted, or issued later by bodies or tribunals having any jurisdiction or authority over the work; and the contractor shall defend, indemnify and save harmless the Municipality, and all its officers, agents, employees, board members, agents, attorneys and volunteers against any claim or liability arising from or based on the violation of any such law, bylaws ordinances, regulations, order, or decree, whether by the contractor in person, its employee(s), or by the contractor's subcontractor(s) or agent(s), or employee(s) or agents thereof.

If the contractor discovers any provision(s) in the contract contrary to or inconsistent with any law, ordinance, regulation, order, or decree, the contractor shall immediately report it to the Local Project Manager in writing. In particular, but not limited thereto, the contractor's attention

is directed to the various regulations promulgated and enforced by the United States, VOSHA, environmental protection, and other resource agencies.

The Contractor shall comply with all applicable Federal, State and local laws.

Section 4: CONTRACTUAL AGREEMENTS

4.01 ENTIRE AGREEMENT; AMENDMENTS.

This Agreement represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

This Agreement shall only be amended by mutual written consent of the parties.

4.02 SEVERABILITY.

Provisions of the contract 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 contract is unenforceable or invalid, that provision shall be deemed severed from the contract, 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 contract

4.03 ADMINISTRATION REQUIREMENTS.

By signing the contract the contractor agrees to the following:

- (a) MUNICIPALITY'S OPTION TO TERMINATE. The contract may be terminated in accordance with the following provisions:
 - (1) Breach of Contract: Administrative remedies - the Municipality may terminate the contract for breach of contract. Termination for breach of contract will be without further compensation to the contractor.
 - (2) Termination for Cause: Upon written notice to the contractor, the Municipality may terminate the contract, as of the date specified in the written notice by the Municipality, if the contractor fails to complete the designated work to the satisfaction of the Municipality within the time schedule agreed upon. The contractor shall be compensated on the basis of the work performed and accepted by the Municipality at the date of termination.
 - (3) Termination for Convenience: The Municipality may, at any time prior to completion of services specified under the contract, terminate the contract by submitting written notice to a contractor fifteen (15) days prior to the

effective date, via certified or registered mail, of its intention to do so.

When a contract is terminated for the Municipality's convenience, payment to the contractor will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made.

When the Municipality terminates the contract for its convenience, the Municipality shall make an equitable adjustment of the contract price, but in doing so shall include no payment or other consideration for anticipated profit on unperformed services.

However, if a notice of termination for convenience is given to a contractor prior to completion of twenty (20) percent of the services provided for in the contract (as set forth in the approved Work Schedule and Progress Report) the contractor will be reimbursed for that portion of any reasonable and necessary expenses incurred to the date of the notice of termination that are in excess of the amount earned under the approved fees 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 contractor shall make no claim for additional compensation against the Municipality by reason of such termination.

- (4) Lack of Funding: If postponement, suspension, abandonment, or termination is ordered by the Municipality because it lacks sufficient funding to complete or proceed with the project, the contractor may not make a claim against the Municipality in any form or forum for loss of anticipated profit.
- (b) Rights and Remedies Additional: The rights and remedies of the Municipality under this article are in addition to any other rights and remedies that the Municipality may possess by law or under this contract.
- (c) Decisions Final and Binding: Decisions of the Municipality on matters discussed in this section shall be final and binding.

4.04 PERSONNEL REQUIREMENTS AND CONDITIONS.

The contractor shall employ only qualified personnel to supervise and perform the work. The Municipality shall have the right to approve or disapprove key personnel assigned to administer activities related to the contract.

Except with the approval of the Municipality, during the life of the contract, the contractor shall

not employ:

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

The Municipality reserves the right to require removal of any person employed by a contractor from work related to the contract for misconduct, incompetence, or negligence, or who neglects or refuses to comply with the requirements of the contract. The decision of the Municipality, in the due and proper performance of its duties, shall be final and not subject to challenge or appeal.

4.05 NO EMPLOYEE BENEFITS FOR CONTRACTOR.

The Contractor understands that the Municipality 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 Municipal employees, nor will the Municipality withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of signing of the Agreement. The Contractor 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 Contractor, 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.

4.06 PERFORMANCE AND COMPLETION OF WORK.

The contractor shall perform the services specified in accordance with the terms of the contract and shall complete the contracted services by the completion dates specified in the contract. With the exception of any ongoing obligations (*e.g.*, insurance, ownership of the work, and appearances) upon completion of all services covered under the contract and payment of the agreed upon fee, the contract with its mutual obligations shall be terminated.

4.07 CONTINUING OBLIGATIONS. The contractor agrees that if, because of death(s) or other occurrences, it becomes impossible to effectively perform its services in compliance with the contract, neither the contractor nor its surviving principals shall be relieved of their obligations to complete the services under the contract. However, the Municipality may terminate the contract if it considers a death, incapacity, or other removal of any principal(s) and/or key project personnel to be a loss of such magnitude that it would affect the contractor's ability to satisfactorily comply with the contract.

4.08 EXTENSION OF TIME.

The contractor agrees to perform the work in a diligent and timely manner; no charges or claims for damages shall be made by the contractor for delays or hindrances from any cause whatsoever.

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 may be granted only by amendment, and only for excusable delays such as delays beyond the control of the contractor and without the fault or negligence of the contractor. The decision of the Municipality relative to granting an extension of time shall be final and binding.

4.09 RESOLUTION OF CONTRACT DISPUTES.

The parties shall attempt to resolve any disputes that may arise under the contract by direct negotiation. Any dispute not resolved by negotiation shall be referred to the Municipal Legislative Body which shall issue a written order regarding the dispute. Such order shall be final and conclusive.

Section 5: OPERATIONAL STANDARDS

5.01 RESPONSIBILITY FOR SUPERVISION.

The contractor shall be responsible for supervision of contractor employees and subcontractors 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 contract.

5.02 INSPECTION OF WORK.

The Municipality, the State and applicable federal agencies, as the case may be, shall, at all times, have reasonable access to the contractor's work for the purposes of inspection, accounting and auditing, and the contractor shall provide appropriate and necessary access to accomplish inspections, accounting, and auditing. The contractor shall permit the Municipality, the State, or representative(s) of the State and applicable federal agencies the opportunity at any time to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the contractor pursuant to the contract. A conference, visit to a site, or inspection of the work may be held at the request of the contractor, the Municipality, the State, and appropriate federal agency (ies).

5.03 PLANS, RECORDS AND AVAILABLE DATA.

At the request of the contractor, the Municipality will make available to the contractor, at no charge, all information and data related to the project.

5.04 REVIEWS AND APPROVALS.

All work prepared by the contractor, subcontractor(s), and representatives thereof pursuant to the contract shall be subject to review and approval by the Municipality. Approval for any work shall be documented in writing.

Approvals shall not relieve a contractor of its professional obligation to correct any defects or errors in the work at the contractor's expense. The contractor, through the Municipality, shall respond to all official comments regardless of their source. The contractor shall supply the Municipality with written copies of all correspondence relating to reviews. All comments must be satisfactorily resolved before the affected work is advanced.

Section 6: PAYMENT FOR SERVICES RENDERED

6.01 PAYMENT PROCEDURES.

The Municipality will pay the contractor, or the contractor's legal representative, progress payments monthly or as otherwise specified in the contract.

- (a) Payment Is Not Acceptance: Approval given or payment made under the contract shall not be conclusive evidence of the performance of said contract, either wholly or in part. Payment shall not be construed to be acceptance of defective work or improper materials.
- (b) Payment for Adjusted Work: As adjustments are required for additions, deletions, or changes to the contract, payment for such work shall be modified accordingly.
- (c) All payments by the Municipality under this Agreement will be made in reliance upon the accuracy of all prior representations by the Contractor, including but not limited to bills, invoices, progress reports and other proofs of work.