

REQUEST FOR PROPOSALS

For

FEASIBILITY STUDY TO MODERNIZE THE FACILITY

And

MEET UPCOMING DISCHARGE REQUIREMENTS

At

**SALISBURY FISH CULTURE STATION
MIDDLEBURY, VERMONT**

**STATE OF VERMONT
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
TWO GOVERNOR AIKEN AVENUE
MONTPELIER, VT. 05633-5801**

**MICHAEL J. OBUCHOWSKI
COMMISSIONER**

APRIL 2012

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INVITATION TO BID
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
STATE OF VERMONT

The objectives of this project are to receive written proposals to perform necessary engineering and fish culture station design services for a preliminary (schematic) design and an estimate of design, engineering and construction costs for the reconstruction of the Salisbury Fish Culture. The feasibility study will be used to identify the need for, the design of, and the funds required for the reconstruction of the Salisbury Fish Culture Station.

Sealed Bids will be received by the Department of Buildings and General Services until **May 23, 2012 2:00PM** at 10 Baldwin Street, Montpelier, Vermont.

Attached with this invitation are the project documents.

A pre-bid meeting is scheduled for this activity. All bidders are invited and encouraged to visit the site on **May 16, 2012 10:00am** at the Salisbury Fish Culture Station.

Your attention is directed to the special instructions regarding the bid proposal submissions. Two envelopes are required: one for the Fee Proposal, the second for the Qualifications and other information. Please follow the Instructions to Bidders carefully.

The Project Manager will be Tom Wiggins who may be contacted at 802-777-2852, if you have any technical questions.

Sincerely,

MICHAEL J. OBUCHOWSKI
COMMISSIONER

INSTRUCTIONS FOR ENGINEERING FIRMS SUBMITTING PROPOSALS

1. Read all provided materials carefully.
2. Complete all items on proposal form.
3. Provide additional information pertaining to the selection criteria for the Selection Committee's evaluation as requested by this RFP and as you deem appropriate.
4. Submission requirements:
 - a) Submit **two (2)** Fee Proposals in a sealed envelope (mark envelope "FEE PROPOSAL") by **Wednesday May 23, 2012 2:00PM** to the Department of Buildings and General Services, 10 Baldwin Street, Montpelier, Vermont 05633-7501.
 - b) Submit **seven (7)** copies of Qualifications and other pertinent information in a separate sealed envelope (mark envelope "QUALIFICATIONS") by **Wednesday May 23, 2012 2:00PM** to the Department of Buildings and General Services, 10 Baldwin Street, Montpelier, Vermont 05633-7501.

BID PROPOSAL
PROFESSIONAL ENGINEERING SERVICES
FEASIBILITY STUDY TO MODERNIZE THE FACILITY
AND
MEET UPCOMING DISCHARGE REQUIREMENTS
AT
SALISBURY FISH CULTURE STATION

TO: STATE OF VERMONT
Agency of Administration
Department of Buildings and General Services
10 Baldwin St.
Montpelier, Vermont 05633-7501

DATE: _____

Ladies and Gentlemen:

The undersigned proposes to provide professional civil engineering services for the feasibility study and meet discharge requirements at the Salisbury Fish Culture Station in Middlebury, Vermont. These services shall be provided in accordance with the requirements of this Request for Proposal and its attachments prepared by the Department of Buildings and General Services dated April 2012.

MAXIMUM LIMITING AMOUNT:

(Written)
(\$) _____
(Figures)

Additional services of professional consultant, authorized in writing by the Owner, shall be billed at a multiple of (_____) times the amount billed to the Engineer for such additional services.

The undersigned certifies that they are familiar with the contents of this Proposal and that they have examined the site and accept the existing conditions as those under which the work will be done.

Basis of award shall be as specified in the request for proposal.

The undersigned acknowledges the right of the Owner to accept or reject any or all Proposals, or to waive any informality in the bidding.

The undersigned further agrees:

1. To hold their bid open for sixty (60) days after this day of Bid Opening.
2. To accept the provisions of the "Instructions to Bidders."
3. To enter into and execute a contract, if awarded on the basis of this proposal within ten (10) calendar days of notification of award.
4. To accomplish the work in accordance with the Bid Documents.
5. To complete the work in accordance with the specified schedule.
6. The amount of compensation paid to the undersigned for extra work and change orders shall be a price agreed upon between the Owner and the Engineer based on the hourly rate schedule.

The undersigned has attached:

- A. An hourly rate schedule for additional services as required.
- B. Criterion 4 – Fee Structure form noting the various rates and hours proposed for this project.

The undersigned acknowledges receipt of the following Addenda:

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Corporate Seal
(If Bidder is
a Corporation)

FIRM NAME: _____

ADDRESS: _____

STATE OF CORPORATION: _____

SIGNATURE: _____

PRINT OR TYPE NAME: _____

TITLE: _____

TELEPHONE NO.: _____

FAX NO: _____

E-MAIL ADDRESS: _____

NOTE: If Bidder is a Partnership, give full names of all Partners.

END OF PROPOSAL

OBJECTIVE & PURPOSE

The objectives of this project are to receive written proposals to perform necessary engineering and fish culture station design services for a preliminary (schematic) design and an estimate of design, engineering and construction costs for the reconstruction of the Salisbury Fish Culture. The feasibility study will be used to identify the need for, the design of, and the funds required for the reconstruction of the Salisbury Fish Culture Station.

Project Background:

The Salisbury Fish Culture Station (FCS) is an older fish culture station listed on the National Historic register. The hatchery is well visited and has approximately 10,000 visitors annually. It has operated as Vermont's Broodstock Station producing eggs for most of Vermont's fish culture programs. The hatchery carries approximately 50,000 pounds of fish annually. It has two gravel packed wells that provide an excellent water source for a fish hatchery. The hatchery; however, is outdated. The method used to distribute water limits its fish production capabilities. The fish rearing units are outdated, poorly designed for uniform flow distribution and waste containment and have concrete and structural problems causing leakage. The facility's treatment of waste is detrimental to the fish and not efficient or effective in treating the waste stream. Recent changes in the Water Quality Standards are anticipating putting the intermittent stream the hatchery discharges too on the impaired waters list (303d) and will require the hatchery to upgrade its waste treatment.

Site and Topography:

The Salisbury FCS in Salisbury Vermont is located in the west central section of Vermont, south of Middlebury and adjacent to Route 53 on the east side of Route 7 (attachments). The station was originally constructed in 1931, with additional raceways constructed in 1968/69. The hatchery is on the National Historic Register. The developed property consists of two sections bordering east and west sides of Route 53. The main fish culture operations, fish hatchery and support services building cover 5.5 acres of the west side of the road, and less than 3.3 acres on the east side. Historically spring water supplied a series of raceways located on the east part of the property; however, the springs no longer flow. To the south, the property rises steeply on both sides of the road and two pumped wells, located southeast on the station, provide the water supply for the hatchery. A diagram shows the key existing components on the site. The initially developed site was designed for gravity flow to the hatchery building, downstream raceways and settling pond to the west. These facilities are situated on a small and narrow parcel of gently sloping land, this original site amounts to approximately three acres. Because of the restricted nature of the basic site, a south series of raceways (constructed in 1968/69) are located on higher ground to the south and required a pumped water supply. Fish rearing in the south series is limited due to water flow restrictions in these units caused by the way the water supply was distributed and valved.

There is strong public interest in hatchery. The hatchery is strategically placed near a popular state park, as well as easily accessed from a major highway (Route 7). The station receives approximately 10,000 visitors annually, despite limited amenities available.

Well Water Supply:

Two twenty horse pumps provide water continuously from two gravel packed wells on the property providing high quality water at a stable water temperature (approximately 46° F) annually. The well water is supersaturated with nitrogen and must be treated before being used on the fish.

These wells appear to be connected hydraulically to each other and connected to the springs that historically flowed. At the present time the total water volume of the wells averages approximately 600 gallons per minute (gpm) annually. The two wells originally produced 900 gpm in the early 1970's; however, the well water volume has decreased significantly and the springs have dried. The screens on the wells plug with sand and gravel and must be refurbished every three years; however, it is recommended the screens be cleaned every two years. The volume of water from the wells changes drastically over a three year period from a high of a little more than 600 gpm to a low of almost 300 gpm. Currently the wells supply water to all parts of the fish culture station, increased water use in the hatchery building reduces the water available to the other parts of the hatchery (the west and south series).

The well water supply must be pumped. In case of power failure there are two independent and automatic backup generators for emergency power. Either generator can operate both pumps. The generators are hooked in sequence such that in the event of a power failure one 50 kilowatt generator will provide power; however, if for some reason the primary generator fails to start there is an automatic transfer switch that turns on the second generator in order to provide power. A third well is located on the property, but has yet to be tested. Groundwater specialists have estimated that an additional 150 gpm may be available from this well.

Fish Culture Activities and Rearing Units (attachment):

The Salisbury FCS produces/holds approximately 50,000 pounds of trout annually as a broodstock station. The current fish culture program is to maintain a broodstock to produce eggs for most of Vermont's fish culture programs with some fish production for annual stocking. The broodstock program requires Salisbury to produce a reliable number of quality eggs of brook, brown, rainbow, steelhead and lake trout to support its own and the other fish culture programs in Vermont. The east series of raceways are covered and light manipulation in this series allows the photo-control timing of some species of brood fish spawning. Brook trout and brown trout spawning periods are advanced in these series of raceways to produce eggs earlier in the year. Salisbury FCS well water supply is pathogen free and has appropriate water temperatures for rearing salmonids making it ideally suited for rearing salmonid broodstock. The hatchery has a B-BF fish health classification (furunculosis); however, has little fish mortality as a result of the pathogen.

East Series Raceways:

A 3-pass series of concrete raceways on the east side of Rout 53 is the remaining section of an originally twinned raceway unit. Each of the three raceways is 89 ft in length by 5 feet in width with a usable water depth of 1.5 feet. This series of raceways receives approximately 200 gallons per minute flow. The raceways are old and in very poor condition. Water is supplied

from the wells, degassed and oxygenated with a low head oxygen unit. The east series of raceways are covered and light manipulation in this series allows the photo-control timing of brood fish spawning. Effluent water discharges and is carried through pipes to be used in the West series of raceways. Cleaning wastes are diverted through the storm drain off route 53 to the stream.

Hatchery Building:

The hatchery building is a historic structure with the fish culture supervisor's residence attached. The hatchery contains 16 concrete rearing tanks with a rearing area of 22 feet by 3 feet at a sub-grade level. In addition, a portion of the hatchery space has been partitioned off as an incubation room. There are 13 Heath Tray stacks with 8 trays each. In addition there are three barrel egg incubators with a 25 quart capacity each. The hatchery uses up to 80 gpm; however, this proportionally reduces flow to the south series which must be taken into account. Water discharges into the West series of raceways.

South Series Raceways:

The south series water supply is split between two column degassers to oxygenate and remove nitrogen gas. One of the columns receives 200gpm and the second column 180gpm that flow into the South series paired series of concrete raceways with a total of 10 concrete raceways. The south series is located on higher ground to the south of the hatchery building. Each raceway is 99 feet long by 5 feet wide and has a usable depth of 1.5 feet of water. Although these raceways are a more recent (1969) installation, the configuration does not produce good water flow with a significant degradation of the water quality for fish rearing from the first to last raceway and does not permit separation of cleaning wastes. Effluent water discharges from these units into the West series. Cleaning wastes are diverted to the settling pond.

West Series Raceways:

A 3-pass series of paired concrete raceways (six raceways) are located on the west side of Route 53. The raceways are 89 ft in length by 5 feet in width and have a usable water depth of 1.5 feet. This series of raceways receive 300 gallons plus per minute flow down each series. The raceways are old and in very poor condition. These raceways receive reused water from the east and south raceway series and from the hatchery. These units are outdated, poorly designed for uniform flow distribution and waste containment and have structural problems causing leakage. The units discharge into a dirt bottom waste setting pond to the west. Cleaning wastes are diverted through the storm drain off route 53 to the stream.

Fish Production:

The Salisbury Fish Culture Station is a brood station producing eggs for all other fish culture programs in Vermont and some fish for stocking carrying a weight of approximately 44,670 pounds of fish in 2012. The Salisbury Hatchery produces several age classes of brook, brown, rainbow and lake trout and two strains of steelhead. Currently five species/strains of young of the year fish are being held in the hatchery building. There are three species of yearlings being held on station (brook, brown and rainbow trout) weighing approximately 5,300 lbs; there are four species of two year fish (lake trout, brook trout, brown trout and rainbow trout) weighing approximately 18,100 pounds; there are three species and two strains of one of the species (brook

trout, brown trout and two strains of steelhead) of three year fish weighing approximately 7,750 pounds; one species, two strains of four year fish (steelhead) weighing approximately 4,670 pounds; finally there are 5 year and 8 year lake trout weighing 2,800 pounds and 6,050 pounds respectively. Annually the poundage and age classes of different species fluctuate dependent on the rotational schedule of different brood line and fish production needs. Fish production in 2012 was slightly reduced in order to refurbish the wells.

Existing Waste Treatment:

The facility's treatment of waste is detrimental to the fish and not efficient or effective in treating the waste stream. The hatchery's water supply flows through the rearing units into a settling pond providing some treatment and then discharges to a small intermittent stream. Solids created from uneaten feed and feces that settle in the rearing units are manually swept from each raceway. Small settling areas at the end of each raceway collect these wastes. The wastes can be removed from the settling areas by pulling a standpipe; however, the waste stream from the east and west series of raceways flows through a storm drain off route 53 directly into the small intermittent stream without treatment. Wastes from the settling areas in the south series of raceways flows to the settling pond. Settling areas at the end of each raceway are inadequately sized and some wastes flow into the next rearing unit over the fish. This creates an unhealthy environment for the fish. In addition there is no way to separate fish treatments (e.g. formalin, Chloramine T, etc.) used from the effluent water. The impacts of the hatchery on the small intermittent stream in which it discharges is further complicated due to the storm drain from Route 53 discharging to the stream just below the hatchery. Recent changes in the Water Quality Standards are anticipating putting the intermittent stream on the impaired waters list (303d) and will require the hatchery to upgrade its waste treatment. The intermittent stream flows into Halnon Brook a half mile below the hatchery.

The following are some of the inadequacies in waste treatment at the hatchery.

- The existing raceways are not equipped with adequate cleaning waste sumps therefore water quality deteriorates through the series of passes.
 - This increases the potential of solids leaving in the effluent stream.
 - It increases the concentration of dissolved nutrients in the discharge.
- The cleaning sumps in the east and west series of raceways discharge directly in to the intermittent stream.
 - This provides no treatment of wastes either solids or nutrients.
- There is no way to continually remove solids from the waste stream.
 - The longer waste feed and fecal matter remains in the effluent water stream, the more nutrients dissolve and increase the concentration nutrients in the waste stream.
- The settling pond treats some settleable solids but will not treat nutrients.
- The settling pond receives storm run-off from an adjacent property not allowing the appropriate monitoring of the hatchery's discharge.
- Approved fishery chemicals used in fish treatment cannot be isolated from the discharge.

Expectations:

The expectations for rebuilding the Salisbury FCS are as follows:

- Maintaining the ability to rear 50,000 pounds of fish.
- Influent water requires nitrogen gas removal.
- Have appropriate size of rearing units for rearing fish at the various age classes (fingerlings, yearling and brood) and sufficient quantity of rearing units to rear all fish lots at appropriate densities.
- Rearing units should be self cleaning.
- Rearing units for the two and three year old brook and brown trout should be covered in a manner to allow light manipulation in these tanks to permit the photo-control timing of brood fish spawning.
- The rearing units should be in an enclosure with appropriate lighting and ventilation. The enclosure should protect from the weather as well as eliminate predation.
- There should be a backup oxygen system in the case of pump failure.
- Waste treatment should at the least meet the following water quality standards for the effluent water:
 - Total solids – 5 mg/L
 - Total Phosphorus - 0.035 mg/L
 - Total Nitrogen – 0.75 mg/L
 - Formalin – 0 mg/L
- The facility should provide resources for visitors including addressing historic and American Disability Act (ADA) requirements.
- Use the existing water supply system, gravel pack wells, pumps and backup generators.
- Explore other water sources including the existing 150 gpm well not used.

Scope of Services

The following services shall be provided by the engineering consultant:

1. Meet with Department and Agency Facilities Engineering personnel to confirm approach, deadlines, and schedules, lines of communication and coordination of project.
2. Review existing pertinent information. The Agency Facilities Engineering section shall provide topographic plans and past feasibility studies.
3. Conduct site reviews to confirm information gathered and review all aspects of the site that will affect the proposed preliminary design(s).
4. Review and discuss the proposed projects with regulatory personnel and resolve issues affecting design and permit requirements.

5. Perform all tests, sampling and lab testing required for regulation and to insure the correct design of treatment systems.
6. Develop preliminary design options including preliminary plans and cost estimates.
7. Perform all necessary engineering calculations and design work to insure the satisfactory operations of the proposed preliminary design(s) and to show the facility will meet regulatory requirements.
8. Meet with Department and Agency Facilities personnel to review direction of the feasibility study/report.
9. Formally present the proposed preliminary design(s) in the form of a feasibility study report. The report shall include preliminary plans, cost estimates, pros and cons of the options and recommendations.

Tentative Project Schedule

- 1) June 15, 2012, Receipt of proposals.
- 2) June 21, 2012, Interview with selected candidates.
- 3) June 28, 2012, Award contract/begin work.
- 4) August 20, 2012, Completion of items 1 through 8 as noted in Scope of Services.
- 5) June 10, 2012, Anticipated Completion of feasibility study, cost estimate and report. During this time frame the consultant will maintain regular communication with Department and/or Agency Facilities personnel to review progress of the feasibility study/report. The timing and methods of this communication will vary depending on status of the feasibility study/report and review and decisions that are required.

QUALIFICATIONS

Provide the following information with the bid:

1. Company must be established in the professional engineering design services field for at least five (5) years. Provide at least three (3) client references with name of contact, telephone number(s) and summary of engineering work provided.
2. Company must have five (5) years experience with similar fish culture station projects. Provide at least three (3) client references with name of contact, telephone number(s) and summary of engineering work provided.
3. Submit names and resumes of those who will be involved with this project.

PROPOSAL FORMAT

Proposals should address the following:

- 1) Qualifications of project personnel
- 2) Experience with similar projects
- 3) Approach to be taken with this project
- 4) Cost per hour for each of the various personnel involved in the project and an itemized list of all other costs.
- 5) Summary of proposed costs, to include:
 - A. Preliminary Design(s)
 - B. Preliminary Plans
 - C. Preliminary Cost Estimates
 - D. Feasibility Study/Report
 - E. Presentation of Report
 - F. Other expenses
 - G. Total "Not to Exceed" cost

A&E EVALUATION CRITERIA

CONSIDERATIONS IN PREPARING PROPOSAL

The selection of the engineering firm will not be based on fee alone; the selection is primarily "qualification" based.

The evaluation criteria for this project are:

- a. Qualifications of project personnel
- b. Experience with similar projects
- c. Approach to be taken with this project
- d. Ability of adhere to stated deadlines
- e. Value

These are the evaluation criteria upon which the selection will be based. Your proposals should respond to each criterion as listed, in a well organized manner and in the order in which they are listed. Respond to each criterion, but restrict information to that requested. Unorganized or excessive and irrelevant information will impede our review of your proposal and could adversely affect the score for one or more criterion. **Nonresponsive proposals will result in disqualification.**

CRITERION 1: Qualifications of project personnel

CRITERION 2: Experience with similar projects

CRITERION 3: Approach to be taken with this project

CRITERION 4: Ability of adhere to stated deadlines

CRITERION 5: Value

IMPORTANT NOTE: The Fee is being evaluated based on “value”. It is important that all requested information, i.e., rates, hours, etc., be provided in the attached Fee Structure table. Failure to provide adequate information to enable the Committee to evaluate the fee based on “value” will result in disqualification of the proposal.

BASIS OF CONTRACT AWARD

The scoring by the Evaluation Committee members will be based on the cumulative point score of the evaluation criteria assigned by the Selection Committee. This score will be converted to an ordinal scoring system (majority rule). This contract will be awarded to the firm receiving the majority of 1st place votes resulting from the conversion subject to the approval of the Commissioner of the Department of Buildings and General Services.

The Committee will be comprised of the following voting members:

Tom Wiggins, Fish Culture Operations Chief
*, Facility Engineer
*, Hatchery Supervisor
*, BGS Senior Purchasing Agent (Non-Voting)

The criteria include:

1. Qualifications of project personnel
2. Experience with similar projects
3. Approach to be taken with this project
4. Ability of adhere to stated deadlines
5. Value

CRITERIA	WEIGHT	MAXIMUM POINTS	WEIGHTED TOTAL
1. QUALIFICATIONS	3	10	30
2. EXPERIENCE	3	10	30
3. APPROACH	2	10	20
4. SCHEUDLE	1	10	10
5. VALUE	1	10	10
TOTAL			100

MASTER COPY DISTRIBUTED _____
(Contractor, Accounting, Regional Director, Project Manager, DFM)
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
(Revised 08/2011)

CONTRACT NO.:*

DEPT. ID: *

PROJECT #: *

THE STATE OF VERMONT

STANDARD FORM OF AGREEMENT BETWEEN
STATE OF VERMONT OR ANY AGENCY
THEREOF AND ARCHITECT

AGREEMENT

made this _____ day of _____ in the year of Two Thousand Eleven.

BETWEEN Agency of Administration
 Department of Buildings and General Services
 Two Governor Aiken Avenue
 Montpelier, Vermont 05633-5801 the Owner, and
 (Name of Agency)

_____ the ARCHITECT.
(Name and Address)

It is the intention of the Owner to

hereinafter referred to as the Project.

The Owner and the ARCHITECT agree as set forth below:

The period of performance under this contract shall commence on * DATE, and end on *, DATE.

MAXIMUM LIMITING AMOUNT \$ *

PROJECT DESCRIPTION:

- I. THE ARCHITECT shall provide professional services for the Project in accordance with the Terms and Conditions of this Agreement.
- II. THE OWNER shall compensate the ARCHITECT, in accordance with the Terms and Conditions of this Agreement in one of the following manners:

(Project Manager needs to select one of the following paragraphs that identifies whether compensation is based on an Hourly Rate or Lump Sum Fixed Fee)

A. Compensation based on Hourly Rate:

FOR THE ARCHITECT'S BASIC SERVICES, as described in Paragraph 1.1, a Basic Fee computed as follows:

Principals' time at the fixed rate of _____ dollars (\$_____) per hour. For the purpose of this Agreement, the Principals are:

Employees' time computed at a multiple of _____ (_____) times the employees' Direct Personnel Expenses as defined in Article 4.

Services of professional consultants at a multiple of _____ (_____) times the amount billed to the ARCHITECT for such services.

The amount of said fee shall not in any event exceed _____ dollars (\$_____)

OR

A. Lump Sum or Fixed Fee

FOR THE ARCHITECT'S BASIC SERVICES, as described in Paragraph 1.1, a Basic Fee of a Lump Sum of dollars (\$_____) determined by multiplying the estimated construction cost by _____%.

PLUS

B. THE ARCHITECT'S REIMBURSABLE EXPENSES, amounts expended as defined in Article 5.

C. FOR THE ARCHITECT'S ADDITIONAL SERVICES (if any), as described in Paragraph 1.3, a fee computed as follows:

Principals' time at the fixed rate of _____ dollars (\$_____) per hour. For the purposes of this Agreement, the Principals are:

Employees' time computed at a multiple of _____ times the employees' Direct Personnel Expense as defined in Article 4.

Additional services of professional consultants authorized in writing by the Owner at a multiple of (_____) times the amount billed to the ARCHITECT for such additional services.

D. THE TIME AND FURTHER CONDITIONS OF PAYMENT shall be as described in Article 6.

III. THE ARCHITECT shall complete those duties set forth in Paragraphs 1.1, through 1.1.28 of this Agreement on or before _____, 20__.

- a. It is understood that any delay caused by the Owner shall result in a corresponding extension of the period specified herein. It is the obligation of the Architect to notify Owner of the delay and to initiate a change order amending and extending the date in paragraph III immediately above.
- b. THE ARCHITECT shall include one (1) complete set of reproducible record prints, which shall be submitted to the Owner prior to final payment for basic services to the ARCHITECT.

The following Paragraph III (c) should be deleted if compensation based on hourly rate is selected in II (A).

- c. THE ARCHITECT'S fee for basic services shall be adjusted at the completion of the design development phase by

multiplying the accepted probable construction cost by the percentage in Paragraph II (A). For purposes of determining the ARCHITECT's fee, the construction cost is exclusive of any contingency. In the event that the Owner and the ARCHITECT cannot agree on an "accepted probable construction cost", the Owner may at his option terminate the contract and pay the ARCHITECT fees due up to the point of termination or direct the ARCHITECT to develop construction documents and to bid these documents. In the later case, the ARCHITECT's fee shall be based on the accepted construction bid or the ARCHITECT's statement of probable construction cost at the design development phase, whichever is least.

OPTIONAL

- d. The accepted probable construction cost used to determine the ARCHITECT's fee (above) shall be converted to a "fixed limit of construction cost" by adding a bidding contingency of 5%. This fixed limit of construction cost shall be established as a condition of this Agreement per Article 3.5.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1

ARCHITECT'S SERVICES

1.1 BASIC SERVICES \$

The ARCHITECT's Basic Services consist of the five phases described below. Except as specifically provided for herein, the ARCHITECT shall provide to the Owner all civil, structural, mechanical and electrical engineering in connection with the Project.

The ARCHITECT shall ensure the project complies with all applicable codes in effect at the time of the design, including but not limited to:

Vermont Fire and Safety Building Code available online at <http://www.dps.state.vt.us/fire/rules.htm>
2005 Vermont Guidelines for Energy Efficient Commercial Construction (Energy Code) available online at <http://www2.iccsafe.org/states/vermont/>

The ARCHITECT, as directed by the Owner, will be required to integrate STATE OF VERMONT DEPARTMENT OF BUILDINGS AND GENERAL SERVICES DESIGN GUIDELINES into the development of the design for this project. The latest version is available online at <http://bgs.vermont.gov/sites/bgs/files/pdfs/BGS-Facilities-Engineering-Guidelines.pdf>.

Written reports delivered under the terms of this contract shall be printed using both sides of the paper.

SCHEMATIC DESIGN PHASE \$

- 1.1.1 The ARCHITECT shall consult with the Owner to ascertain the requirements of the Project, and the ARCHITECT and the Owner shall confirm such requirements in writing.
- 1.1.2 The ARCHITECT shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components for and until approval by the Owner.
- 1.1.3 The ARCHITECT shall conduct meetings with the Owner, Efficiency Vermont, and relevant members of the design team, to review the Project and elicit ideas for consideration in developing the most energy efficient project supportable by funding opportunities and consistent with program intent.
- 1.1.4 The ARCHITECT shall prepare for the Owner an initial accounting of how the Project may respond to LEED criteria considering available opportunities.
- 1.1.5 The ARCHITECT shall submit to the Owner a Statement of Probable Construction Cost based on current area, volume or other unit costs.

DESIGN DEVELOPMENT PHASE \$

- 1.1.6 The ARCHITECT shall prepare from the approved Schematic Design Studies, the Design Development Documents consisting of drawings (including at least architectural, structural, mechanical and electrical plan, building sections; finish schedule), outline specifications following the Construction Specification Institute "CSI" Format and other necessary documents to fix and describe the size and character of the entire Project as to its site, structural, mechanical, and electrical systems, materials and other such essentials as may be appropriate, for and until approval by the Owner.
- 1.1.7 The ARCHITECT shall conduct meetings with the Owner, Efficiency Vermont, and relevant members of the design team, to review the Design Development Documents for the purposes of furthering the energy efficiency objectives of the Project.
- 1.1.8 The ARCHITECT shall prepare for the Owner a revised accounting of how the Project is responding to LEED criteria.
- 1.1.9 The ARCHITECT shall submit to the Owner a revised Statement of Probable Construction Cost based thereon.

CONSTRUCTION DOCUMENTS PHASE \$

- 1.1.10 The ARCHITECT shall prepare from the approved Design Development Documents the Contract Document consisting of the working drawings and specifications (following the CSI Format) setting forth in detail the requirements for the construction of the entire Project, and all necessary bidding information; and shall assist in the preparation of bidding forms, the Condition of the Contract, and the form of the Agreement between the Owner and the Contractor, for and until approval by the Owner.
- 1.1.11 The ARCHITECT shall prepare for the Owner a revised accounting of how the Project responds to LEED criteria.
- 1.1.12 The ARCHITECT shall submit to the Owner in writing a Revised Statement of Probable Construction Cost based thereon indicated by changes in requirement or general market conditions.
- 1.1.13 The ARCHITECT shall assist the Owner as requested in filing the required documents for the approval of governmental authorities having jurisdiction over the Project.
- 1.1.14 The ARCHITECT shall submit the bid set, at 90% completion of the construction documents, to Efficiency Vermont for construction document review.
- 1.1.15 The ARCHITECT shall prepare and submit complete set of contract bid documents; drawings to be stamped and signed in PDF format and an unstamped set in .dwg format with a complete set of specifications in Microsoft Word, to the Owner at no additional cost.

BIDDING OR NEGOTIATION PHASE \$

- 1.1.16 The ARCHITECT, following the Owner's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall provide the Owner with any documents, assistance, or revised construction documents necessary for the Owner to: obtain bids or negotiated proposals; award and prepare construction contracts.

CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT \$

- 1.1.17 The Construction Phase will commence with the award of the Construction Contract and will terminate when final payment is made by the Owner to the Contractor.
- 1.1.18 The ARCHITECT, shall work with the Owner during the construction of the Project to provide the administration of the contract between the Owner and the Contractor in accordance with the terms herein and consistent with the contract between the Owner and the Contractor, and the extent of his duties and responsibilities and the limitations of his authority as assigned there under shall not be modified without his written consent.
- 1.1.19 The ARCHITECT shall advise and consult with the Owner and all of the Owner's instructions to the Contractor shall be issued through the ARCHITECT after authorization by the Owner.
- 1.1.20 The ARCHITECT shall, at all times, have access to the work wherever it is in preparation or progress.
- 1.1.21 The ARCHITECT shall make periodic visits to the Project site, at least biweekly, and shall make such further visits when reasonably requested by the Owner, as to familiarize himself with the progress and quality of the work

performed and as to determine, on the basis of such visits, if such progress and quality are in accordance with the Contract Documents. The ARCHITECT shall be responsible for project meeting minutes. In addition to this, the ARCHITECT shall periodically report his findings thereon to the Owner, at such times as in the exercise of his professional judgment such findings are appropriate and at least monthly, at the conference provided for in Section 1.1.22, and further at such times as the Owner may reasonably request. The ARCHITECT shall not be required to make exhaustive or continuous on-site inspections, except as required in the exercise of his professional judgment for said reports and except in particular, to fulfill the commissioning requirements. The ARCHITECT shall not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work, and he shall not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents except as provided for herein specifically between the Owner and the ARCHITECT.

- 1.1.21.1 In preparing the bid documents, to the extent that the ARCHITECT utilizes sub-consultants for their expertise, such as, but not limited to: Civil, Structural, Mechanical, and Electrical Engineers these consultants, in effect, become an extension of the ARCHITECT. Where the term ARCHITECT is used in Section 1.1.18 it shall include those sub-consultants when work is being performed in their area of expertise. For example, the Mechanical Engineer would inspect the under slab plumbing before it is backfilled, but then wouldn't necessarily be needed on site until the rest of the mechanical systems are being installed. The sub-consultant shall also be required to periodically inspect the progress of the "as-builts" and verify that they are up to date and verify such to the ARCHITECT, before the ARCHITECT issues the certificate of payment for that pay period.
- 1.1.22 Based upon his determination and reports made under Section 1.1.21 of this Agreement and upon the Contractor's applications for payment, the ARCHITECT shall once every month, after an on-site conference between the Owner, the Contractor and the ARCHITECT, determine the amount then owing to the Contractor and shall then issue a certificate of payment for the amount agreed upon. The issuance of a Certificate for Payment shall constitute a representation by the ARCHITECT to the Owner, based on such ARCHITECT's determination and report and the data supplied to him by the Contractor (without affecting his duties defined in Section 1.1.21), that the work has progressed to the point indicated; that the quality of the work is in accordance with the Contract Documents (subject to the results of any specified subsequent tests required by the Contract Documents, to immaterial and insubstantial deviations from the Contract Documents, which will be corrected prior to completion, and to any further specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to such payment in the amount certified. Provided, however, the issuance of such certificate will not affect any obligations of the Contractor to the Owner. By issuing a certificate for payment, the ARCHITECT shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the contract sum. It is understood that the ARCHITECT can not accept any part of the work for the Owner; he can only recommend acceptance. Final acceptance is a right reserved for the Owner.
- 1.1.23 The ARCHITECT shall be, in the first instance, the interpreter of the requirements of all Construction Documents, and shall have all requisite authority relating thereto for the purposes of authorizing the Contractor to proceed or stop with any component of the project. The ARCHITECT shall not be liable to the Owner for any loss or cost incurred by the Owner arising from delays in the construction schedule caused by any decision made by the ARCHITECT in the reasonable exercise of professional judgment either to exercise or not to exercise his authority to stop the Work.
- 1.1.24 The ARCHITECT shall review and approve shop drawings, samples and other submissions of the Contractor as in conformance with the design concept and the information in the Contract Documents and the designs and plans relating to the Project, and shall from time to time report to the Owner his findings thereon.
- 1.1.25 The ARCHITECT shall prepare all change orders and supporting data for the Owner's approval.
- 1.1.26 The ARCHITECT shall conduct inspections to determine the Dates of Substantial Completion and Final Completion, and shall receive written guarantees and related documents assembled by the Contractors and shall issue a final certificate of payment in accordance with Section 1.1.22.
- 1.1.27 The ARCHITECT shall be responsible for system commissioning in accordance with BGS design guidelines and as indicated in the BGS commissioning specifications. The ARCHITECT shall inspect, and document, each and every system to ensure that it complies with design intent, including but not limited to: system installation, system operation, and seasonal changeover.
- 1.1.28 Except in the manner specifically provided for herein, the ARCHITECT shall not be responsible to the Owner for the acts or omission of the Contractor or any of his agents or employees, or any other person not an employee or agent of the ARCHITECT performing work on the Project. The ARCHITECT shall be responsible for and shall pay

the amount of any increase in the total Contract Price or the total Change Orders Price, which increase results from an error, inconsistency, or omission in the Contract Documents or instructions, other than those which are approved in writing by the Owner.

- 1.1.29 Architect shall furnish to the Owner, a complete set of marked up drawings and specifications showing all the changes to the Construction Documents made by Addenda, Change Orders, Shop Drawings, RFIs and other information received from the Clerk. The changes to the drawings are to be created on a separate layer in the .dwg set and highlighted in a box, cloud or the like in the PDF set. The specifications are also to differentiate the changes made by highlighting in a box, cloud, etc. and be provided in Microsoft Word. These drawings and specifications shall be supplied within three (3) months of the date of Substantial Completion and before final payment.

1.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

- 1.2.1 The Owner may at its option secure the services of a person known as a Clerk-of-the-Works, referred to herein as a "Clerk". A Clerk shall, for all purposes of this Agreement, report and be solely responsible to the Owner. The Owner may at any time dismiss the Clerk for cause; however, any such action shall not affect the Owner's and ARCHITECT's obligations under this Agreement. In such event, the Owner shall use their best efforts to secure the services of a Clerk under this paragraph as soon as is practicable.
- 1.2.2 The Clerk shall make continuous and complete on-site inspections of the work performed on the Project, to the extent reasonable under all the circumstances. The on-site inspections of the work performed and any reports prepared by the Clerk will be made available to the ARCHITECT for use in making his Determination and Report under this Agreement, however the use of the clerk's on-site inspections or reports does not relieve the Architect from his obligations under paragraph 1.1.22 of this agreement and it is solely the responsibility of the Architect to ensure that that the work has progressed to the point indicated and that the quality of the work is in accordance with the Contract Documents. Further, through such on-site observations by the Clerk, the ARCHITECT shall endeavor to provide protection for the Owner against defects in the Work, but the furnishing of such Clerk shall not: (1) make the ARCHITECT responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents; or (2) Relieve the Architect from his obligation to exercise due diligence and ensure that the work has progressed to the point indicated and that the quality of the work is in accordance with the Contract Documents

1.3 ADDITIONAL SERVICES

The following services are not covered in Paragraphs 1.1 or 1.2. If any of these Additional Services are authorized in writing by the Owner, they shall be paid for by the Owner as hereinbefore provided.

- 1.3.1 Providing special analyses of the Owner's needs, programming the requirements of the Project and assistance to the permitting process.
- 1.3.2 Providing financial feasibility or other special studies.
- 1.3.3 Providing planning surveys, site evaluations, or comparative studies of prospective sites.
- 1.3.4 Revising previously approved Drawings, Specification or other documents to accomplish changes not initiated by the ARCHITECT, except as provided in Paragraph 3.5.1.
- 1.3.5 Providing the required services to execute all Owner-initiated Change Orders.
- 1.3.6 Preparing documents for alternate bids requested by the Owner.
- 1.3.7 Providing Detailed Estimates of Construction Costs.
- 1.3.8 Providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Paragraphs 1.1 and 1.2 as may be required in connection with the replacement of such work.
- 1.3.9 Providing professional services made necessary by the default of the Contractor in the performance of the Construction Contract.
- 1.3.10 Providing Contract administration and observation of construction after the Contract Time has been exceeded by

more than twenty percent (20%) through no fault of the ARCHITECT.

- 1.3.11 Providing services not caused by errors, inconsistency or an omission of the ARCHITECT after final payment to the Contractor.
- 1.3.12 Providing the services required for or in connection with the selection of furniture and furnishings.
- 1.3.13 Providing services for planning tenant or rental spaces.
- 1.3.14 Making measured drawings of existing construction when required for planning additions or alterations thereto, except as otherwise herein provided.

ARTICLE 2

THE OWNER'S RESPONSIBILITIES

- 2.1 The Owner shall provide full information regarding its requirements for the Project on or before _____, 20**.
- 2.2 The Owner shall designate a representative authorized to act in its behalf with respect to the Project. The Owner or its representative shall examine documents submitted by the ARCHITECT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the ARCHITECT's work.
- 2.3 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.
- 2.4 The Owner shall secure for itself such legal, accounting and insurance counseling services as may be necessary for the Project and such auditing services as he may require to ascertain how or for what purposes the Contractor has used the monies paid to him under the Construction Contract.
- 2.5 The services, information, surveys and reports required by Paragraphs 2.3 shall be furnished at the Owner's expense, and the ARCHITECT shall be entitled to rely upon the accuracy of the reports related to the structural, mechanical, chemical and other laboratory tests, inspections and reports required by law or the Contract Documents.
- 2.6 If the representative appointed under Paragraph 2.2 observes or otherwise becomes aware of any fault or defect in the project or non-conformance with the Contract Documents, he shall give prompt written notice thereof to the ARCHITECT.
- 2.7 The Owner shall furnish information required of him as expeditiously as necessary for the orderly progress of the work.

ARTICLE 3

CONSTRUCTION COST

- 3.1 Construction Cost to be used as a basis for determining the ARCHITECT's Fee for all work designed or specified by the ARCHITECT, including labor, materials, equipment and furnishings, shall be determined as follows, with precedence in the order listed.
 - 3.1.1 For completed construction, the accepted construction bid, or the ARCHITECT's latest Statement of Probable Construction Cost, whichever is the least.
 - 3.1.2 For work not constructed, the lowest bona fide bid received from a qualified bidder for any or all of such work, or the ARCHITECT's latest Statement of Probable Construction Cost, whichever is the least.
 - 3.1.3 For work for which bids are not received, the latest Detailed Cost Estimate, or the ARCHITECT's latest Statement of Probable Construction Cost, whichever is the least.
- 3.2 Construction Cost does not include the fees of the ARCHITECT and consultants, the cost of the land, rights-of-way, or other costs, which is the responsibility of the Owner as provided in Paragraphs 2.3 through 2.4.
- 3.3 Labor furnished by the Owner for the Project, however, with respect only to the construction of such

components thereof as have been designed by the ARCHITECT, shall be included in the Construction Cost at current market rates. Materials and equipment furnished by the Owner shall be included at current market prices, except that used materials and equipment shall be included as if purchased new for the Project.

- 3.4 Statements of Probable Construction Cost and Detailed Cost Estimates prepared by the ARCHITECT represent his/her best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the ARCHITECT nor the Owner has any control over the cost of labor, materials, or equipment, over the contractors' methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the ARCHITECT cannot and does not guarantee that bids will not vary from any Statement of Probable Construction Cost or other cost estimate prepared by him.
- 3.5 When a fixed limit of Construction Cost is established as a condition of this Agreement, it shall include a bidding contingency of five (5%) percent unless another amount is agreed upon in writing. When such a fixed limit is established, the ARCHITECT in consultation with the Owner shall be permitted to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and to make reasonable adjustments in the scope of the Project to bring it within the fixed limit. The ARCHITECT with the approval of the Owner may also include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit.
- 3.5.1 If the lowest bona fide bid or the Detailed Cost Estimate exceeds the latest statement of Probable Construction Cost, the Owner shall (1) give written approval of an increase in the construction cost, or (2) authorize rebidding the Project, or (3) cooperate in revising the Project scope and quality as required to reduce the probable construction cost, (4) discontinue the project and pay the ARCHITECT as specified in paragraph 6.1.2 up to and through Bidding or Negotiation Phase. In the case of (3), the ARCHITECT, without additional charge, shall modify all drawings and specifications as necessary to bring the latest bona fide bid within the latest Statement of Probable Construction Cost; provided, however, that the ARCHITECT will not be liable to the Owner for any loss or cost incurred by the Owner caused by the delay arising from the making of such modifications.

ARTICLE 4

DIRECT PERSONNEL EXPENSE

- 4.1 Direct Personnel Expense of employees engaged on the Project by the ARCHITECT includes ARCHITECTS, engineers, designers, job captains, draftsmen, specification writers and typists, in consultation, research and design in producing Drawings, Specifications and other documents pertaining to the Project, and in services during construction at the site.
- 4.2 Direct Personnel Expense includes actual cost and of mandatory and customary financial benefits paid.

ARTICLE 5

REIMBURSABLE EXPENSES

- 5.1.1 Expenses of transportation and living when traveling in connection with the Project for other than regular trips from the office to the site, and for long distance calls. All travel outside of the State of Vermont must be approved by the Owner prior to the expense thereof becoming reimbursable.
- 5.1.2 Expenses of reproduction, postage and handling of Drawings and Specifications, excluding copies for ARCHITECT's office use and triplicate sets at each phase for the Owner's review, use and approval; and fees paid for securing approval of authorities having jurisdiction over the Project.
- 5.1.3 If authorized in advance by the Owner in writing, the expense of overtime work requiring higher than regular rates; perspectives or models for the Owner's use; and fees of special consultants for other than the normal structural, mechanical and electrical engineering services.
- 5.1.4 It is the intent of the Owner that the ARCHITECT shall obtain, at the expense of the Owner, all necessary borings, soil engineering, and other information required in connection with the Project, but only after estimated costs thereof have been submitted and have been approved in writing by the Owner. The ARCHITECT shall provide to the Owner such detailed cost estimates required by either the Owner or the ARCHITECT, at the Owner's expense, but only after estimated costs thereof have been submitted and have been approved in writing by the Owner.
- 5.1.5 The ARCHITECT shall furnish at the request of the Owner and at the expense of the Owner, a satisfactory land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property;

rights-of-way, restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private.

- 5.1.6 The ARCHITECT shall exercise his best judgment and selection in obtaining the information described in Sections 5.1.4 and 5.1.5 and shall be entitled to rely on the accuracy of such information, survey and tests.

ARTICLE 6

PAYMENTS TO THE ARCHITECT

- 6.1 Payments on account of the ARCHITECT's Basic Services shall be made as follows:
- 6.1.2 Monthly payments shall be made to the ARCHITECT by the Owner within 30 days of the receipt by the Owner of an itemized invoice in accordance with this Agreement. Progress payments for Basic Services shall be in proportion to the services performed within each phase of service, not to exceed the following percentages:
- | | | |
|-----------------------------------|-----|-----|
| Schematic Design Phase | 15% | |
| Design Development Phase | | 20% |
| Construction Documents Phase | 40% | |
| Bidding or Negotiation Phase | 5% | |
| Construction Administration Phase | 20% | |
- 6.2 In all events, the ARCHITECT shall submit his completed itemized accounting of all costs monthly to the Owner, and the Owner shall make all payments within 30 days of receipt of the invoice.
- 6.3 No deductions shall be made from the ARCHITECT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.
- 6.4 If the Project is suspended for more than three months or abandoned in whole or in part, the ARCHITECT shall be paid his compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due and all terminal expenses resulting from such suspension or abandonment.

ARTICLE 7

ARCHITECT'S ACCOUNTING RECORDS

- 7.1 Records of the ARCHITECT's Direct Personnel, Consultant and Reimbursable Expenses pertaining to the Project, and records of accounts between the Owner and the Contractor, shall be kept on a generally recognized accounting basis and shall be available to the Owner or its authorized representative at mutually convenient times, at no additional cost to the Owner.

ARTICLE 8

TERMINATION OF AGREEMENT

- 8.1 This agreement may be terminated by either party upon the giving of seven (7) days written notice to the other party. In the Event of termination by the Owner for any reason other than a failure to perform on the part of the ARCHITECT, the ARCHITECT shall be entitled to receive payment for the actual services rendered and for sums he irrevocably committed to the date of notice of termination. In the event that the ARCHITECT shall be irrevocably committed to purchase any materials, supplies, or other tangible articles, the Owner shall be entitled to receive all such materials, supplies, or tangible articles when paid for. In the event of termination on the part of the ARCHITECT, the ARCHITECT shall be entitled to receive payment for services and disbursements actually rendered or paid to the date of notice of termination, less any expenses which the Owner may be put to as a result of the termination by the ARCHITECT over and above the total sum agreed to herein. In the event that the ARCHITECT shall have been paid in full for services and expenses previously rendered or paid as of the date of notice of termination, the ARCHITECT agrees to promptly pay the Owner the additional expense above referred to upon submission of statement of such expense to the ARCHITECT by the Owner.
- 8.2 It is understood that a breach on the part of the Owner of this Agreement shall be sufficient reason for the ARCHITECT to be relieved of the additional expense referred to in this paragraph.

- 8.3 Notwithstanding any of the foregoing, the Owner's obligations under this Agreement shall cease when the funds appropriated for this agreement are expended.

ARTICLE 9

OWNERSHIP OF DOCUMENTS

- 9.1 Ownership of Documents: All products of Architects work, including all drawings, specifications, estimates, and all other documents, including shop drawings, calculations, etc., prepared at any time in connection with the Project, are the sole property of the State, whether the work is executed or not and may not be copyrighted or resold by Architect. The contractor hereby agrees to furnish drawings in .dwg and PDF formats, final PDF drawings are to be stamped and signed; final .dwg drawings do not need to be stamped or signed. Specifications, estimates and all other electronic documents are to be in or converted to Microsoft Office: Word, Excel, Project, etc. Any project documents that are not in or converted to one of the above electronic formats, contractor is to provide three (3) copies of all such documents. All .dwgs documents shall be submitted in AutoCAD 2004 format or newer with all items embedded including Xrefs and photos. Contractor to verify compatibility with the State's CADD unit prior to using any AutoCAD specialty software suite or product (civil, mechanical, map, etc.). Furnish all custom support cad files (fonts, line types, plot styles, etc.) All drawings to include a configured layout tab with sheet border and viewports for printing. All electronic files are to be submitted on an optical disc, CD or DVD in a format suitable for use by Buildings and General Services. These documents are to be provided at no additional cost to the State.

PLAN SECURITY CERTIFICATION

- 9.2 ARCHITECT acknowledges that the plans pertaining to this project have been declared exempt from public record inspection for security reasons and have been disclosed to Contractor as per 1 V.S.A. §317(c)(32) for the performance of the Work specified herein. Contractor hereby expressly acknowledges and agrees to disclose plans only to a licensed architect, engineer, or Contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the state.

Furthermore, ARCHITECT agrees to abide by BGS Administrative Policy # 35 and any existing or future directives set forth by the State concerning the copying or distribution of the plans. Fraud, misrepresentation, falsification, or concealing or covering up material facts relating to compliance with these directives may result in one or more of the following actions: termination of the contract(s), suspension of bidding privileges, withholding, deducts, forfeiture of security bonds, and criminal prosecution punishable by imprisonment of up to five years and/or up to a \$10,000 fine as per 13 V.S.A. §3016.

ARTICLE 10

SUCCESSORS AND ASSIGNS

- 10.1 The ARCHITECT hereby agrees that he/she will not assign the performance of this Agreement to any other ARCHITECT not specifically mentioned herein without the prior written consent of the Owner, provided, however, that this Agreement will inure to the benefit of and be binding upon the partners, successors, assigns or legal representatives of the ARCHITECT.
- 10.2 The ARCHITECT hereby agrees that he/she shall personally perform, or personally supervise, all of the services or work in connection with the Project as are designated as the duties and obligations of the ARCHITECT under this agreement, and further, the ARCHITECT agrees that he is solely responsible for the performance of the services herein, designated as those of the ARCHITECT.

ARTICLE 11

TAXES

- 11.1 The State is exempt from all sales and federal excise taxes. ARCHITECT will be responsible for the payment of any sales, consumer, use and other similar taxes for the Work or portions thereof provided by the ARCHITECT which are legally enacted at the time bids are received, whether or not yet effective.

ARTICLE 12

CHANGES TO ARCHITECT AGREEMENT

12. The State may increase, decrease, or alter the work or materials, or it may otherwise modify the specifications or conditions of the project to be furnished hereunder, and any changes occasioned thereby, including any changes in amounts to be paid hereunder, shall be in the form of a change order which shall be agreed to and approved in writing by the Commissioner of the Department of Buildings and General Services, and which shall become a part of this Contract. Verbal instructions, from any source, shall not be valid. No claim or defense may be made under the Contract with respect to such changes unless agreed to in writing.

ARTICLE 13

GENERAL

- 13.1 This agreement consists of ____ pages including the following attachments which are incorporated herein.

ATTACHMENT C: Standard State Provisions for Contracts and Grants, a preprinted form (revision dated 01/10/2011)

ATTACHMENT D: Standard State Provisions - Architect/Engineer Professional Service Agreement (dated April 12, 2011)

ORDER OF PRECEDENCE

- 13.2 Order of Precedence: Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment C (Standard Contract Provisions for Contracts and Grants)
- (3) Attachment D (Standard State Provisions - Architect/Engineer Professional Service Agreement)
- (4) List other attachments in order of precedence

- 13.3 The obligations and duties contained in Articles, 4, 5, 11, of the Architects' Agreement with the state shall apply to subcontractors of the Agreement as well as to the ARCHITECT. The ARCHITECT agrees to include Articles 4, 5, 11 in all subcontracts. The ARCHITECT has complied with and shall continue to comply with all requirements with respect to qualification to do business in Vermont and registration with the office of the Secretary of State. In the event that all or a portion of the project is to be subject to a subcontract, it shall be the responsibility of the ARCHITECT to determine that the subcontractor has complied with the above requirements of registration and qualification.

- 13.4 Paragraph headings are inserted for convenience only and are not to be relied upon for content.

This Agreement executed the day and year first written above.

OWNER: Department of Buildings
and General Services
(Name of State Agency)

ARCHITECT: _____
(Name of Firm)

By _____

By _____

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

- 1. 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.
- 2. Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
- 3. 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.
- 4. Appropriations:** 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.
- 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, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

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. 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.

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.

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.

- 7. 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 the 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.

General Liability and Property Damage: With respect to all operations performed under the contract, 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 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

- 8. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
- 9. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a

copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

10. Records Available for Audit: The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter 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. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 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. Party further agrees to include this provision in all subcontracts.

12. 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.

13. 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 the 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.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the 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.

- 15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing 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.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. 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.

(End of Standard Provisions)

Attachment D

Standard State Provisions

Architect/Engineer Professional Service Agreement

Attachment C, Paragraph 6 is 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.

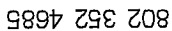
F. As used herein, "Professional Negligence" or "negligent acts, errors or omissions" means a failure by the Party to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or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

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SALISBURY FISH CULTURE STATION

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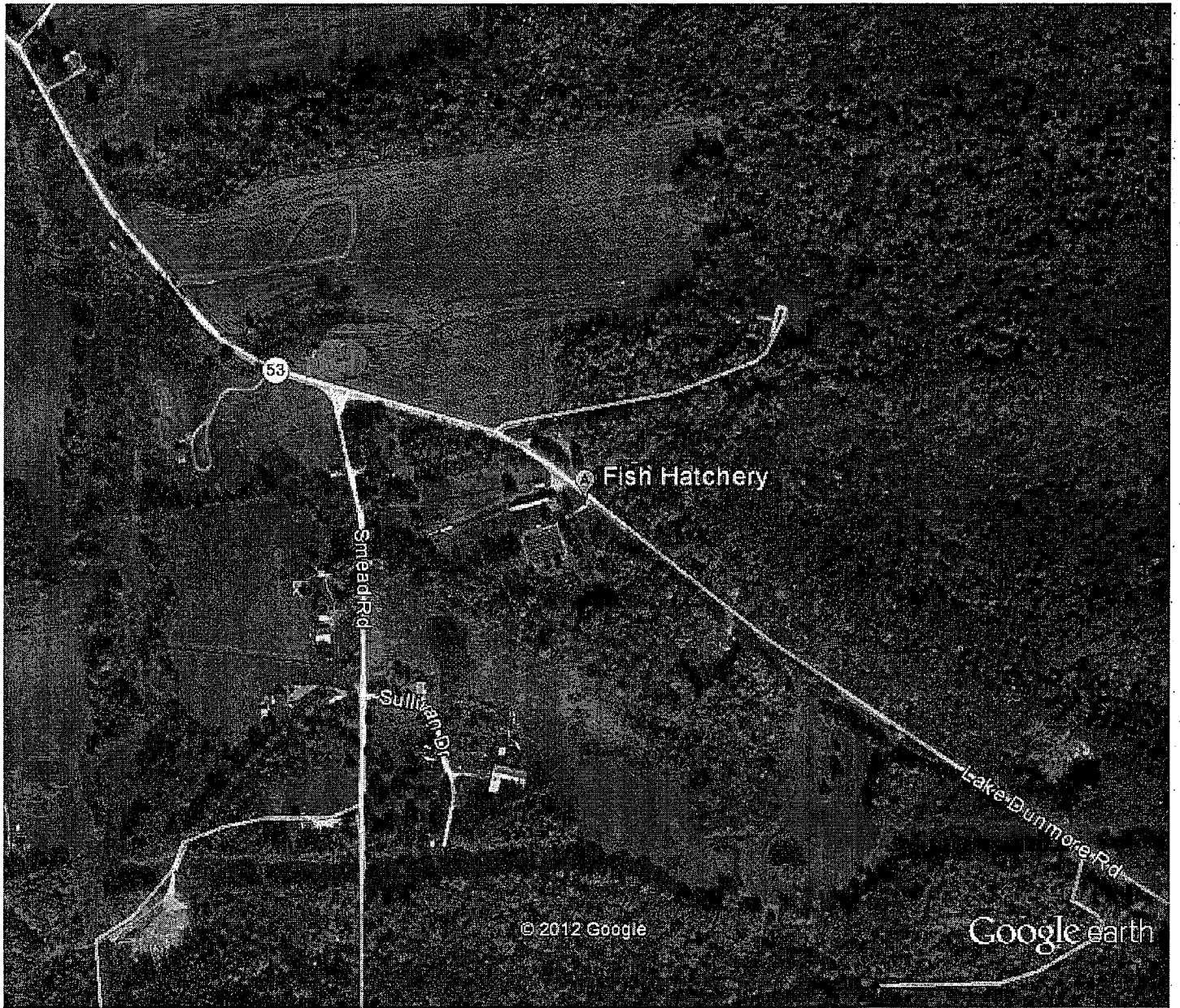


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