



City of Barre, Vermont

6 N. Main St., Suite 2
Barre, VT 05641
www.barrecity.org

R. Nicolas Storlicastro
City Manager
(802) 476-0240
citymanager@barrecity.org

Project Number: DR-4720 Requests for Proposals for City of Barre Federal Emergency Management Agency (FEMA) Program Consulting Services

Description: The City of Barre is seeking experienced and qualified firms for Federal Emergency Management Agency (FEMA) Program Consulting Services to protect the interests of the City of Barre during the recovery from the July 2023 flood (DR-4720).

Pre-Bid/Proposal Conference: There will be no Pre-Proposal Meeting held for this project.

Proposal Due Date: September 1, 2023 @ 12:00 PM
Proposals must be submitted by mail to the Barre City Manager's Office at 6 N. Main Street, Suite 2, Barre, VT 05641, or by email to ExecAssist@barrecity.org.

Proposals submitted after the indicated time will not be considered but returned unopened to sender.

For additional information, contact: Dawn Monahan, Assistant City Manager
(802) 476-0252
FinanceDirector@barrecity.org

Notes:

- Documents may also be obtained by using www.barrecity.org
- All questions must be submitted in writing by contacting the Assistant City Manager.
- The City of Barre reserves the right to reject any and all bids, to waive any informalities, and to accept all or any bid as deemed in the best interest of the City.
- All vendors must submit a W-9 Form with their response.

GENERAL CONDITIONS

1. **Acknowledgement of Amendments:** Proposers shall acknowledge receipt of any Amendment to the Solicitation by signing and returning the Amendment with the proposal. The acknowledgment must be received by the place specified for receipt of proposals.
2. **Agreement Time Extensions:** The City may grant an extension of Agreement Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of proposal. The City may allow such extension of time only for delays occurring during the Agreement time period or authorized extensions of the Agreement Time period. When failure by the City to fulfill an obligation under the Agreement results in delays to the controlling items of Work, the City will consider such delays as a basis for granting a time extension to the Agreement.

The City will not grant time extensions to the Agreement for delays due to the fault or negligence of the Consultant.

3. **Assignment:** The Consultant shall not assign, transfer, convey, sublet, or otherwise dispose of any award or any or all of its rights, title, or interest therein, without the prior written consent of the City.
4. **Conflict of Interest:** All Proposers or their sub-consultants must disclose with their Proposal the name of any officer, director, or agent who is also an employee of the City of Barre. Further, all Proposers must disclose the name of any City of Barre employee who owns, directly or indirectly, an interest of five percent (5%) or more of the Proposer's firm or any of its branches. The Proposer shall insert in all contracts entered into in connections with the Project or any property include or planned to be included in any Project the following provision:

“No member, officer or employee of the Proposer during their tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.”

5. **Indemnification and Hold Harmless:** Consultant shall indemnify and hold harmless the City and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the Agreement.
6. **Informalities and Irregularities:** The City has the right to waive minor defects or violations of a proposal from exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by a Proposer with the proposal for the City to properly evaluate the proposal, the City has the right to require such additional information as it may deem necessary after the time set for receipt of proposals, provided that the price, quality, quantity, delivery, or performance time of the services being procured does not change.
7. **Legal Requirements:** The Agreement shall be governed in all respects by the laws of the State of Vermont, and any litigation with respect thereto shall be brought in the Courts of the State of Vermont. Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the item(s) covered herein apply. Lack of knowledge by the Proposer will no way be cause for relief from responsibility.
8. **Liability:** The Consultant shall hold and save the City of Barre, its officers, agents, and employees harmless from liability of any kind in the performance of or fulfilling the requirements prior to and during the term of this Agreement.

9. **Liens:** Before the final draw is payable, Consultant must furnish a sworn statement that all sums due for services, material or labor on the project have been paid in full. If the City receives any Notice to Owner on this Project, then in addition to the requirements set forth above, Consultant shall at the time of each draw furnish a partial waiver of lien from all Sub-consultants, material or labor providers, and at the time of the final draw shall furnish a final waiver of lien for each such Sub-consultant, material or labor provider; as a condition precedent to receiving any payment from the City. Consultant shall indemnify the City and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of Consultant under this Agreement; or the negligence of the Consultant in the performance of its duties under this Agreement, or any act or omission on part of the Consultant, his agents, employees, or servants.

The Consultant may, if any sub-consultant refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Purchasing Officer, to indemnify the City against any lien. If any lien remains unsatisfied after all payments are made, the Consultant shall refund to the City all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

10. **Prompt Payment Provisions:** Consultant shall prepare and submit to the City of Barre for approval, invoices for the services rendered under this Agreement. Invoices for services shall be paid in accordance with City of Barre policies. All invoices shall be accompanied by a report identifying the nature and progress of the work performed. The statement shall show a summary of fees with an accrual of the total fees billed and credits for portions paid previously. The City reserves the right to withhold payment to the Consultant for failure to perform the work in accordance with the provisions of this Agreement and the City shall promptly notify the Consultant if any invoice or report is found to be unacceptable and will specify the reasons.

11. **Public Records:** If the Contractor [Consultant] has questions regarding its duty to provide public records relating to this contract, contact the City's custodian of public records at cdawes@barrecity.org.

- a. Contractor [Consultant] must keep and maintain all public records required by the Agency in order to perform services under this Contract.
- b. Upon request from the City's custodian of public records, Contractor [Consultant] shall provide the City with a copy of the requested public records or allow the records to be inspected or copied within a reasonable time and cost.
- c. Contractor [Consultant] shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor [Consultant] does not transfer the records to the City.
- d. Upon completion of the contract, Contractor [Consultant] shall transfer, at no cost, to the City all public records in the possession of the Contractor [Consultant], or keep and maintain public records required by the City to perform the service under this contract. If the Contractor [Consultant] transfers all public records to the City upon completion of the contract, the Contractor [Consultant] shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor [Consultant] keeps and maintains public records upon completion of the contract, the Contractor [Consultant] shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

12. Records Retention: Consultant shall maintain all such records for a period of five years following acceptance of final payment and have them available for inspection by the City and/or any agents designated by the City.

13. Termination for Convenience: The City reserves the right to cancel this Agreement by written notice to the Consultant effective the date specified in the notice, for any of the following reasons:

- a. The City has determined that such cancellation will be in the best interest of the City to cancel the Agreement for its own convenience.
- b. Funds are not available to cover the cost of the services. The City's obligation is contingent upon the availability of appropriate funds.

The City Manager shall give written notice of the termination to the Consultant specifying the reason for the Agreement termination and when termination becomes effective. The Consultant shall incur no further obligations in connection with the terminated Work and on the date set in the Notice of Termination the Consultant will stop Work to the extent specified.

The City shall pay the Consultant under following conditions:

- a. All costs and expenses incurred by the Consultant for work accepted by the City prior to the Consultant's receipt of the notice of termination.

Anticipatory profit for work and services not performed by the Consultant shall not be allowed.

14. Termination for Default: The City shall be the sole judge of nonperformance, which shall include any failure on the part of the Consultant to accept the award, to furnish required documents, and/or to fulfill any portion of this Agreement within the time stipulated. Upon default by the Consultant to meet any term of this Agreement or related Exhibit, the City will notify the Consultant to advise the City of its plan for corrective action to remedy the default within three (3) days (weekends and holidays excluded). The corrective action plan must be accepted by the City. Failure on the Consultant's part to correct the default within the approved time period shall result in the Agreement being terminated and the City, notifying in writing the Consultant of the effective date of the termination. The following shall constitute an act of default:

- a. Failure to perform the Work required under the Agreement and/or within the time required or failing to use the sub-consultants, entities, and personnel as identified and set forth, and to the degree specified in the Agreement.
- b. Failure to begin the Work under this Agreement within the time specified.
- c. Failure to perform the Work with sufficient workers to ensure timely completion.
- d. Neglecting or refusing to correct Work where prior work has been rejected as nonconforming with the terms of the Agreement.
- e. Becoming insolvent, being declared bankrupt by a US Bankruptcy Court, renders the successful firm incapable of performing the Work in accordance with and as required by the Agreement.
- f. Failure to comply with any of the terms of the Agreement.
- g. Failure to pay sub-consultants or others pursuant to Work done under this Agreement.

In the event of default, the Consultant shall pay any damages sustained by the City including Attorney's fees and Court costs incurred in collecting any damages. Title to all materials, work-in-progress, and completed but undelivered goods will pass to the City after costs are claimed and allowed. All documents prepared by the Consultant in connection with this Agreement will be the property of the City.

SPECIAL CONDITIONS

1. INSURANCE REQUIREMENTS:

Before performing any services, the CONSULTANT(S) shall procure and maintain, during the life of the Agreement, unless otherwise specified the insurance coverage listed below. The policies of insurance shall be primary and written on forms acceptable to the CITY. No changes are to be made to these specifications without prior written specific approval by the CITY.

WORKERS' COMPENSATION:

Coverage is to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$500,000 each accident, \$500,000 each employee. If Contractor is not required by statute to carry workers' compensation insurance, Contractor agrees: (1) to provide Municipality with evidence documenting Form 29 has been filed with the Vermont Department of Labor, which excludes Corporate officers or LLC members from the requirement of obtaining workers' compensation insurance; (2) to provide prior notice to the Municipality of any change in exemption status; and (3) to defend, hold harmless, and indemnify Municipality from and against any and all claims and losses brought by Contractor or any subcontractor or other person claiming through Contractor for workers' compensation or employers' liability benefits for damages arising out of any injury or illness resulting from performance of work under this Contract. If any such change requires Contractor to obtain workers' compensation insurance, Contractor agrees to promptly provide Municipality with evidence of such insurance coverage.

COMMERCIAL GENERAL LIABILITY – OCCURRENCE FORM REQUIRED:

CONSULTANT shall maintain Commercial General Liability (CGL) Insurance with a limit of not less than \$2,000,000 each occurrence and \$4,000,000 aggregate. CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury and advertising injury. Damage to rented premises shall be included at \$100,000. The policies shall name the City as an additional insured.

COMMERCIAL AUTOMOBILE LIABILITY INSURANCE:

CONSULTANT shall maintain automobile liability insurance with a limit of not less than \$2,000,000 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos). The policy shall be endorsed to provide contractual liability coverage. The policies shall name the City as an additional insured.

EVIDENCE OF INSURANCE:

The CONSULTANT shall furnish the CITY with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The CITY is to be specifically included as an additional insured on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy. All Certificates of Insurance must be on file with and approved by the CITY before the commencement of any work activities.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PROGRAM CONSULTING SERVICES SCOPE OF SERVICES

1. Objective of the Request for Proposals:

The Respondent awarded an Agreement shall provide the Federal Emergency Management Agency (FEMA) Program Consulting Services described herein. These services include, but are not limited to:

- General FEMA Program, including but not limited to the Public Assistance program, Sheltering and Temporary Essential Power (STEP), Hazard Mitigation Grant Program (HMGP), grant management advice and assistance insurance advice and assistance, procurement advice and assistance,
- Assistance with development and ongoing activities with a team of City employees to manage the FEMA Public Assistance process, and other eligible FEMA programs as needed by the City.
- Assistance with preparation of correspondence to State of Vermont and FEMA when required,
- Advice as to eligibility of expenses
- Assistance in meeting deadlines imposed by FEMA and the State of Vermont for documentation, appeals, completion of work, etc.,
- Review of current City policies and assistance with development and documentation of new City policies to ensure compliance with Vermont Emergency Management and State of Vermont requirements and guidelines,
- Assistance with hazard mitigation proposals, alternate projects, and improved projects to protect the City's interests.
- Assistance with preparation of large and small project worksheets, so that scope of work is accurate and comprehensive, estimates are accurate, expenses and eligible and documents, and that projects are categorized as small or large in a manner that ensures prompt and sufficient reimbursements to the City,
- Assistance with dispute resolution and appeals,
- Periodic reports to management as to status of FEMA Public Assistance process and progress and status and progress other Vermont Emergency Management programs that the City may become eligible for post disaster,
- Assistance with project final inspection, closeout, and audits, and
- Other related activities as requested by the City.

The FEMA Consulting Services must comply with the requirements of FEMA, the State of Vermont, and any other applicable laws and regulations.

2. Background Information:

The City seeks to protect its interests in the event of a disaster by securing the services of a qualified provider of FEMA consulting services including but not limited to consulting services for FEMA programs as outlined above

3. Evaluation Criteria:

Each proposal will be reviewed, and consideration will be given to each of the following criteria;

- Ability to provide services listed
- Experience with similar projects
- Qualifications for staff
- Total cost

4. Content of Submission:

The proposal submitted in response to this Request for Proposals (RFP) shall be printed on 8-1/2' x 11" white paper and bound if submitted by mail or in one PDF file if submitted electronically; shall be clear and concise, and provide the information requested herein. Statements submitted without the required

information will not be considered. Responses shall be organized as indicated below. The Respondent should not withhold any information from the written response in anticipation of presenting the information orally or in a demonstration, since oral presentations or demonstrations may not be solicited. Each Respondent must submit adequate documentation to certify the Respondent's compliance with the City's requirements. Respondent should focus specifically on the information requested.

5. Format:

The response, **at a minimum**, shall include the following.

A. Cover Page

A cover page that states "**PROPOSAL FOR FEMA CONSULTING SERVICES**" must be included. The cover page should contain Respondent's name, address, telephone number, and the name of the Respondent's contact person(s).

B. Sections

Executive Summary

The Respondent shall provide a narrative of the firm's qualities and capabilities that demonstrates how the firm will work with the City to fulfill the requirements of the Project. Describe the firm's methods of providing FEMA Program Consulting Services listed in Section One, both the office and at locations affected by the disaster.

Relevant Experience

The Respondent shall provide a project history of the firm or organization demonstrating experience with projects that are similar in scope and size to the proposed Project.

Past Performance on Similar Projects

The Respondent shall provide a list of past projects indicating the following:

- Name and full address of the reference project client
- Name and telephone number of client contact for referenced project
- Date of initiation and completion of contract
- Summary of the project and services

Project Approach

The Respondent shall describe the approach and methodology it will use to accomplish the work defined herein. The project approach shall include information on schedule and availability where applicable.

Staffing for this Project & Qualifications of Key Personnel

The respondent shall describe the composition and structure of the firm (sole proprietorship, corporation, partnership, joint venture) and include names of persons with an interest in the firm.

The Respondent shall include a list of the proposed staff that will perform the work required if awarded this Agreement. An organizational chart and management plan should be included in this section. The Respondent shall also include minimum qualifications for each class of employee of the project team and identify his/her role on the team. Include in this section the location of the main office and the location of the office proposed to work on this project.

Other Information

Respondent shall provide any additional project experience that will give an indication of the Respondent's overall abilities.

Project Budget

Respondent shall use a format similar to that of the sample shown below, with at least as much detail. The titles of persons working on this project and the hourly rates shall be listed. Any other expenses not included in this hourly rates shall be itemized at the bottom.

**PROJECT BUDGET
FEMA Consulting Services**

You may use a spreadsheet of your own design, but it must be in similar format, and include at least as much information.

Position Description	Hourly rate*	“fully loaded” hourly rate**
Research Consultant	150.00	200.00
Research Assistant	80.00	100.00
Administrative Assistant	50.00	75.00
*base hourly rate does not include “out-of-pocket” costs, such as travel, lodging, meals supplies, etc.		
**Include in “fully loaded” hourly rate: lodging, per diem, and overhead		

Financial Information and Litigation

The Respondent will provide the following information:

(1) A List of the person’s or entity’s shareholders with five percent or more of the stock or, if a general partnership, a list of the general partners; or, if a limited liability company, a list of its members; or, if a solely owned proprietorship, names(s) of owners(s).

(2) A list of the officers and directors of the entity.

(3) The number of years the person or entity has been operating and, if different, the number of years it has been providing the services, goods, or construction services called for in the bid specifications (include list of similar projects);

(4) The number of years the person or entity has operated under its present name and any prior names.

(5) Answers to the following questions regarding claims and suits;

a. Has the person, principals, entity, or any entity previously owned, operated or directed by any of its officers, major shareholders or directors, ever failed to complete work or provide the goods for which it has contracted? Yes or no. If yes, provide details;

b. Are there any judgements claims, arbitration proceeding or suits pending or outstanding against the person, principal of the entity, or entity, or any entity previously owned, operated or directed, by any of its officers, directors, or general partners? Yes or no. If yes, provide details;

c. Has the person, principal of the entity, entity, or any entity previously owned, operated or directed by any of its officers, major shareholders or directors, within the last five years, been a party to any lawsuit, arbitration, or mediation with regard to a contract for services, good or construction services similar to those requested in the specifications with private or public entities? Yes or no. If yes, provide details;

d. Has the person, principal of the entity, or any entity previously owned, operated or directed by any of its officers, owners, partners, major shareholders or directors, ever initiated litigation against the City or been sued by the City in connection with a contract to provide services, goods or construction services? Yes or no. If yes. Provide details;

e. Whether, within the last five years, the owner, an officer, general partner, principal, controlling shareholder or major creditor of the person or entity was an officer, director, general partner, principal, controlling shareholder or major creditor of any other entity that failed to perform services or furnish goods similar to those sought in the request for competitive solicitation;

(6) Customer references (minimum of three), including name, current address and current telephone number;

The City reserves the right to request additional information related to the financial qualifications, technical competence, the ability to satisfactorily perform within the contract time constraints, or other information the City deems necessary to determine if the entity responding is responsible.

HOLD HARMLESS

Contractor/Consultants shall indemnify and hold harmless the City, and the City’s officers and employees from and against any and all liability, costs, losses, and damages (including but not limited to reasonable attorney’s fees) arising out of or to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Contractor/Consultant and other persons employed by or utilized by Contractor/Consultant in their performance under this Agreement.

Type of Organization (Please Check One):

Individual Ownership **Joint Venture**
 Partnership **Corporation**

Name of Bidding Firm:

Mailing Address:

Location Address:

City & State: _____ **ZIP:** _____

Telephone: _____

Name/Title of person authorized to bind the Company: _____

Signature of person authorized to bind the Company: _____

Date: _____

(SAMPLE AGREEMENT)
CITY OF BARRE AGREEMENT FOR PROFESSIONAL SERVICES
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PROGRAM CONSULTING SERVICES

THIS CONTRACT is made this ____ day of _____, 20____, between **THE CITY OF BARRE, VERMONT**, hereinafter referred to as “CITY”, whose address is 6 N. Main Street, Barre, VT 05641, and _____, a _____, hereinafter referred to as (“CONSULTANT”), whose address is _____.

WHEREAS, the CITY desires to retain a CONSULTANT to provide Federal Emergency Management Agency (FEMA) Program Consulting Services as more particularly specified in the Scope of Services; and,

WHEREAS, CONSULTANT desires to render services described in the Scope of Services and has the qualifications, experience, staff and resources to perform those services; and,

WHEREAS, through a competitive selection process conducted in accordance with the requirements of CITY policy, the CITY has determined that it to be in the best interest of the CITY to award an Agreement to the CONSULTANT for the rendering of those services described in Exhibit A; and;

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable considerations, the following terms and conditions are hereby agreed to between the CITY and the CONSULTANT.

I. INCORPORATION BY REFERENCE AND ENTIRE AGREEMENT.

The foregoing “Whereas” clauses are hereby incorporated by reference and affirmed and ratified by the parties as true and correct. The Documents which comprise this Contract between the CITY and the CONSULTANT are attached hereto, made a part hereof and consist of the following:

- A. This Contract;
- B. Scope of Services attached hereto as Exhibit “A”;
- C. The General/Special Conditions attached hereto as Exhibit “B”.
- D. Price Proposal Form attached hereto as Exhibit “C”.
- E. CONSULTANT’S Proposal Forms attached hereto as Exhibit “D”.

II. CONSULTANT SERVICES.

CONSULTANT agrees to diligently and timely perform professional services as described in the Scope of Services described in Exhibit “A”, with the same degree of care, skill and diligence as ordinarily provided by a professional under similar circumstances. CONSULTANT shall at no additional cost to the CITY re-perform Services which fail to satisfy the foregoing standard of care.

III. RESPONSIBILITIES OF THE CONSULTANT(S).

- A. CONSULTANT shall advise and consult with the CITY during all phases of service. CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement issued pursuant to the Agreement. CONSULTANT shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall CONSULTANT be responsible for the General Consultant's failure to perform the Work in accordance with the requirements of the Agreement Documents. CONSULTANT shall be responsible for the CONSULTANT’S negligent acts or omissions.
- B. CONSULTANT shall furnish all labor, supervision, equipment and materials for the Service. If the CONSULTANT is comprised of more than one legal entity, each entity shall be jointly responsible for the performance of this Agreement.
- C. The CONSULTANT agrees to incorporate the provisions of this Agreement in any subcontract into which it might enter with reference to the services performed.
- D. The CONSULTANT shall comply with all federal, state, and local laws, regulations and ordinances applicable to the Work or payment for Work and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of Work under this Agreement.
- E. The CONSULTANT shall maintain books, records, documents, and other evidence directly pertaining to or connected with the Services under this Agreement which shall be available at the CONSULTANT’S offices and shall be accessible electronically for the purpose of inspection and audit by the CITY, or any of its authorized representatives. Such records shall be retained for a minimum of five-(5) years after completion of the services or as required by Vermont Statutes.

- F. CONSULTANT further represents and warrants that all previous representation and statements made in its response to Request for Proposals are accurate to the best of CONSULTANT'S knowledge and reaffirms its attestations and the information contained in those documents herein.
- G. CONSULTANT represents and warrants that all state and federal licenses required to complete the Work shall be obtained by the CONSULTANT prior to commencement of any Work.
- H. CONSULTANT shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CONSULTANT shall take all necessary precautions to insure the safety of persons, the environment, and its work product.

IV. OBLIGATIONS OF CITY.

- A. The CITY will designate an Administrative Agent or Agents to act on behalf of the CITY with respect to the Scope of Services and whose role is to monitor activities and ensure all requirements are met and do all things necessary to properly administer the terms and conditions of this Agreement. The responsibility of the CITY's Administrative Agent shall include:
 - 1. Examination of all reports, estimates, proposals, and other documents presented by the CONSULTANT, rendered in writing, and to make any necessary decisions within a reasonable time.
 - 2. Transmission of instructions, receipt of information, interpretation and definition of CITY policies and decisions with respect to design, materials, and other matters pertinent to the Work covered by this Agreement.
 - 3. Review for approval or rejection of all of the CONSULTANT'S documents and payment requests in a timely manner.
 - 4. Returning items delivered by the CONSULTANT, which are not conforming to the Scope of Services, at the CONSULTANT'S expense and risk of increase in cost for items not delivered as specified.
- B. The CITY shall, upon request, furnish the CONSULTANT with all existing data, plans, studies and other information in the CITY's possession which may be useful in connection with the Work, all of which shall be and remain the property of the CITY and shall be returned to the CITY's Administrative Agent upon completion of the Services to be performed by the CONSULTANT.
- C. The CITY's Administrative Agent shall conduct periodic reviews of the Work of the CONSULTANT necessary for the completion of the CONSULTANT'S services during the period of this Agreement and may make other CITY personnel available, where required and necessary to assist the CONSULTANT. The availability and necessity of said personnel to assist the CONSULTANT shall be determined solely within the discretion of the CITY.

V. COMPENSATION AND PAYMENT OF CONSULTANT.

A. METHOD OF PAYMENT

- 1. CONSULTANT shall prepare and submit to the CITY's Administrative Agent for approval, invoices for the Services rendered under this Agreement. Payment shall be issued by the CITY's Finance Department, who shall initiate disbursements for invoices approved by the Administrative Agent in accordance with CITY policies. All invoices shall be accompanied by a report identifying the nature and progress of the Services performed. The statement shall show a summary of fees with an accrual of the total fees billed and credits for portions paid previously. The CONSULTANT shall submit an invoice for payment to the CITY on a monthly basis. The CITY reserves the right to withhold payment to the CONSULTANT for failure to perform the Services in accordance with the provisions of this Agreement and the CITY shall promptly notify the CONSULTANT if any invoice or report is found to be unacceptable and will specify the reasons.
- 2. For Services that were partially completed, progress payments shall be paid monthly in proportion to the percentage of completed Work on those specific services approved in writing by the CITY's Administrative Agent based on the percentage of the amount for those specific services.
- 3. Before the final draw is payable, the CONSULTANT must furnish a sworn statement that all sums due for services, material or labor have been paid in full.

4. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, will survive final payment and termination or completion of this Agreement.

VI. INDEMNIFICATION. CONSULTANT shall indemnify and hold harmless the CITY and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement.

VII. INSURANCE.

A. Before performing any services, the CONSULTANT(S) shall procure and maintain, during the life of the Agreement, unless otherwise specified the insurance coverage listed below. The policies of insurance shall be primary and written on forms acceptable to the CITY. No changes are to be made to these specifications without prior written specific approval by the CITY.

WORKERS' COMPENSATION:

Coverage is to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a limit of \$500,000 each accident, \$500,000 each employee. If Contractor is not required by statute to carry workers' compensation insurance, Contractor agrees: (1) to provide Municipality with evidence documenting Form 29 has been filed with the Vermont Department of Labor, which excludes Corporate officers or LLC members from the requirement of obtaining workers' compensation insurance; (2) to provide prior notice to the Municipality of any change in exemption status; and (3) to defend, hold harmless, and indemnify Municipality from and against any and all claims and losses brought by Contractor or any subcontractor or other person claiming through Contractor for workers' compensation or employers' liability benefits for damages arising out of any injury or illness resulting from performance of work under this Contract. If any such change requires Contractor to obtain workers' compensation insurance, Contractor agrees to promptly provide Municipality with evidence of such insurance coverage.

COMMERCIAL GENERAL LIABILITY – OCCURRENCE FORM REQUIRED:

CONSULTANT shall maintain Commercial General Liability (CGL) Insurance with a limit of not less than \$2,000,000 each occurrence and \$4,000,000 aggregate. CGL insurance shall be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damage and property damage resulting from explosion, collapse or underground (x, c, u) exposures, personal injury and advertising injury. Damage to rented premises shall be included at \$100,000. The policies shall name the City as an additional insured.

COMMERCIAL AUTOMOBILE LIABILITY INSURANCE:

CONSULTANT shall maintain automobile liability insurance with a limit of not less than \$2,000,000 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos). The policy shall be endorsed to provide contractual liability coverage. The policies shall name the City as an additional insured.

EVIDENCE OF INSURANCE:

The CONSULTANT shall furnish the CITY with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The CITY is to be specifically included as an additional insured on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. The policy shall provide a 30-day notification clause in the event of cancellation or modification to the policy. All Certificates of Insurance must be on file with and approved by the CITY before the commencement of any work activities.

B. POLICY FORM.

1. All policies, required by this Agreement, with the exception of Professional Liability and Workers Compensation, or unless specific approval is given by the CITY are to be written on an occurrence basis, shall name City of Barre, its Mayor, Councilors, Officers, Agents, Employees and Volunteers as additional insured as their interest may appear under this Agreement. Insurer(s), with the exception of Professional Liability and Worker Compensation, agree to waive all rights of

- subrogation against the City of Barre, its Mayor, Councilors, Officers, Agents, Employees and Volunteers.
2. Insurance required in this Agreement shall be provided by or in behalf of all sub-consultants to cover their operations performed under this Agreement. The CONSULTANT shall be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to sub-consultants.
 3. Each insurance policy required by this Agreement shall:
 - A. Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - B. Be endorsed to state that coverage shall not be suspended, voided or canceled by either party except after thirty (30) calendar days prior written notice by Certified Mail, Return Receipt requested has been given to the CITY.
 4. The CITY shall retain the right to review, at any time, coverage, form, and amount of insurance.
 5. The procuring of required policies of insurance shall not be construed to limit the CONSULTANT'S liability nor fulfill the indemnification provisions and requirements of this Agreement.
 6. The CONSULTANT shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject, whether or not the CITY is an insured under the policy.
 7. Claims made policies will be accepted for professional and hazardous materials and such other risks as are authorized by CITY. All Claims Made Policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two-(2) years. If provided as an option, the CONSULTANT agrees to purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
 8. Certificates of Insurance evidencing Claims Made or Occurrence form coverage and conditions to this Agreement, as well as the Agreement number and description of Work, are to be furnished to the City of Barre (6 N. Main Street, Suite 2, Barre, Vermont 05641) prior to commencement of Work AND a minimum of thirty (30) calendar days prior to expiration of the Insurance Agreement when applicable. All insurance certificates shall be received by the CITY before the CONSULTANT will be allowed to commence or continue work.
 9. Notices of Accidents (occurrences) and Notices of Claims associated with work being performed under this Agreement, shall be provided to the CONSULTANT'S insurance company and CITY as soon as practicable.

VIII. OWNERSHIP AND USE OF DOCUMENTS.

The documents, or reproducible copies, including reports, designs, specifications, notebooks, tracings, photographs, negatives, findings, data, memoranda and other documents developed by the CONSULTANT in connection with its Services shall be delivered to, and shall become the property of the CITY as they are received by the CITY. The CONSULTANT hereby assigns all its copyright and other proprietary interests in the products of this Agreement to the CITY. Specific written authority is required from the CITY's Administrative Agent for the CONSULTANT to use or disclose any of the work products of this Agreement on any non-CITY project.

IX. TIMELY PERFORMANCE OF CONSULTANT'S PERSONNEL.

The timely performance and completion of the required services is vitally important to the interest of the CITY. The CONSULTANT shall assign a Project Manager, together with such other personnel as are necessary to assure faithful prosecution and timely delivery of services pursuant to the requirements of this Agreement. The personnel assigned by the CONSULTANT to perform the Services of this Agreement, shall comply with the information presented in the Professional Services Response Proposal made a part hereof by reference. The CONSULTANT shall ensure that all key personnel, support personnel, and other agents are fully qualified and capable to perform their assigned tasks. Any change or substitution to the CONSULTANT'S key personnel must receive the CITY Administrative Agent's written approval before said changes or substitution can become effective.

- A. The Services to be rendered by the CONSULTANT shall commence upon notification of an event, the CONSULTANT'S receipt of written Notice of Commencement, if possible, from the CITY's Administrative Agent.
- B. The CONSULTANT specifically agrees that all Work performed under the terms and conditions of this Agreement shall be completed within the time limits as set forth in this Agreement, subject only to delays caused through no fault of the CONSULTANT or the CITY. Time is of the essence in the performance of this Agreement. The CONSULTANT shall not be entitled to any claim for damages including loss of profits, loss of use, overhead expenses, equipment rental, etc. because of hindrances or delays for any cause whatsoever, whether or not occasioned by an act of God, or by any act or omission on the part of the CITY. CITY's agents or governmental agencies having jurisdiction which hinder or delay may entitle the CONSULTANT to an extension of time in which to complete the Work, which shall be determined by the CITY, provided that the CONSULTANT will give written notice within two weeks as provided herein of the cause of such act, hindrance or delay. An extension of time shall be the CONSULTANT'S sole and exclusive remedy for all claims for delay, including delays attributable to breach of the Agreement or tort. However, the time shall not be extended past the completion date stipulated in any agreement executed by the CITY. If any emergency or natural disaster causes delay or interference with the use or delivery of the Services, the CITY reserves the right to cure from other sources any services during any suspension of delivery.
- C. During an event, the CONSULTANT agrees to provide to the CITY's Administrative Agent as defined herein, monthly written progress reports concerning the status of the Project if requested. The CITY's Administrative Agent may determine the format for this progress report. The CITY shall be entitled at all times to be advised at its request, and in writing, as to the status of Work performed by the CONSULTANT. The CONSULTANT, upon request, will include a Project Schedule update with all written progress reports.
- D. In the event unreasonable delays occur on the part of the CITY or regulatory agencies as to the approval of any plans, permits, reports or other documents submitted by the CONSULTANT which delay the Project Schedule completion date, the CITY's Administrative Agent shall not unreasonably withhold the granting of an extension of the Project Time limitation equal to the aforementioned delay.

X. PERSONAL SERVICES; ASSIGNMENT.

The Work and Services provided for herein shall be performed by the CONSULTANT, and no other person shall be engaged upon such Work or Services by the CONSULTANT except upon the written approval of the CITY, provided, however that this provision shall not apply to secretarial, clerical or other similar incidental services needed to assist the CONSULTANT in performance of this Agreement. The CONSULTANT shall not hire CITY employees to perform any portion of the Work or Services provided for herein. Neither this Agreement nor any interest or claims hereunder shall be assigned or transferred by the CONSULTANT to any party or parties, except with the written consent of the CITY. CONSULTANT agrees that no more than 75% of the dollar value of the Work, excluding printing or other similar ancillary services, shall be performed by any sub-consultant(s). The CONSULTANT shall advise the CITY of the identity of sub-consultant(s) performing Work prior to the sub-consultant(s) beginning any Work.

XI. TERMINATION FOR DEFAULT.

The CITY shall be the sole judge of nonperformance, which shall include any failure on the part of the CONSULTANT to accept the award, to furnish required documents, and/or to fulfill any portion of this Agreement within the time stipulated.

Upon default by the CONSULTANT to meet any term of this Agreement or related Exhibit, the CITY will notify the CONSULTANT, providing three (3) days (weekends and holidays excluded) to advise the CITY of its plan for corrective action to remedy the default. The corrective action plan must be accepted by the CITY. Failure on the CONSULTANT'S part to correct the default within the approved time period shall result in the Agreement being terminated and the CITY notifying in writing the CONSULTANT of the effective date of the termination. The following shall constitute an act of default:

- 1. Failure to perform the Work required under the Agreement and/or within the time required or failing to use the sub-consultants, entities, and personnel as identified and set forth, and to the degree specified in the Agreement.
- 2. Failure to begin the Work under this Agreement within the time specified.

3. Failure to perform the Work with sufficient workers to ensure timely completion.
4. Neglecting or refusing to correct Work where prior work has been rejected as nonconforming with the terms of the Agreement.
5. Becoming insolvent, being declared bankrupt by a US Bankruptcy Court, renders the successful firm incapable of performing the Work in accordance with and as required by the Agreement.
6. Failure to comply with any of the terms of the Agreement.
7. Failure to pay sub-consultants or others pursuant to Work done under this Agreement.

In the event of default, the CONSULTANT shall pay any damages sustained by the CITY including attorney's fees and court costs incurred in collecting any damages. Title to all materials, work-in-progress, and completed but undelivered goods will pass to the CITY after costs are claimed and allowed. All documents prepared by the CONSULTANT in connection with this Agreement will be the property of the CITY.

The CITY shall authorize payment to the CONSULTANT, the costs and expenses for Work performed by the CONSULTANT prior to receipt of a notice of termination; however, the CITY may withhold from amounts due the CONSULTANT such sums as the Administrative Services Agent deems to be necessary to protect the CITY against loss caused by the CONSULTANT because of the default.

XII. TERMINATION FOR CONVENIENCE.

A. The CITY reserves the right to cancel this Agreement by written notice to the CONSULTANT effective the date specified in the notice, for any of the following reasons:

1. The CITY has determined that such cancellation will be in the best interest of the CITY to cancel the Agreement for its own convenience.
2. Funds are not available to cover the cost of the Services. The CITY's obligation is contingent upon the availability of appropriate funds.

The City Manager shall give written notice of the termination to the CONSULTANT specifying the reason for the Agreement termination and when termination becomes effective.

The CONSULTANT shall incur no further obligations in connection with the terminated Work and on the date set in the Notice of Termination the CONSULTANT will stop Work to the extent specified.

The CITY shall pay the CONSULTANT under following conditions:

1. All costs and expenses incurred by the CONSULTANT for Work accepted by the CITY prior to the CONSULTANT'S receipt of a notice of termination.
Anticipatory profit for Work and Services not performed by the CONSULTANT shall not be allowed.

If, after Notice of Termination of the CONSULTANT'S right to proceed under the provisions of this clause, it is determined for any reason that the CONSULTANT was not in default under the provisions of the Agreement, the CITY may at its option, agree to reinstate the Agreement allowing for project completion.

Neither the CITY nor the CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to uncontrollable forces, the effect of which, by the exercise of reasonable diligence the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage and governmental actions.

Neither party shall, however be excused from performance if non-performance is due to forces, which are preventable, removable, or remediable, and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations under this Agreement.

- B. Convenience. The CITY reserves the right to cancel this Agreement if the cancellation is in the best interest of the CITY for its own convenience.
- C. In addition to termination, if during the term of the Agreement, the CONSULTANT(S) should refuse or otherwise fail to perform any of its obligations under the Agreement, the CITY reserves the right to: 1) obtain the services from another CONSULTANT, and/or 2) suspend the CONSULTANT from bidding for

a period of twenty-four (24) months on other CITY Solicitations or Requests for Proposals. In the event the CITY has not terminated the Agreement and there remains a dispute with the CONSULTANT, the CONSULTANT agrees at the CITY's request to continue to operate and perform under the terms of the Agreement while such dispute is pending and further agrees that, in the event a suit is filed for injunction or other relief, it will continue to operate until the final adjudication of the suit by the CITY unless otherwise requested by the CITY.

XIII. MISCELLANEOUS.

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all agreements between them, whether oral or written with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. For any material change in the Scope of Services or any increase in the compensation for the services, the CITY and the duly authorized representative for the CONSULTANT shall agree in writing to this change. All changes shall be in accordance with the requirements of the City of Barre Procurement Policy.
- B. Any reference to a Vermont Statutes in this Agreement shall incorporate that law by reference and made a part of this Agreement.
- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law. The rights and obligations of the parties under this Agreement shall be governed by the laws of the State of Vermont and the venue for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement shall be in Washington County, Vermont. If any term, condition, or covenant of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.
- D. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- E. Any notices, invoices, reports, or any other type of documentation required by this Agreement shall be sufficient if personally delivered, sent by the parties via United States certified mail, postage paid, or via email as agreed to by the parties.
- F. The CONSULTANT shall keep books, records, and accounts of all activities related to the performance of this Agreement in compliance with generally accepted accounting procedures. All document, papers, books, records, and accounts made or received by the CONSULTANT in conjunction with the Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the CITY.
- G. It is possible that during the course of and subsequent to the termination of this Agreement, the CONSULTANT may desire to publish certain results of scientific, technical or general interest study originating under or existing by virtue of this Agreement in, or by means of journals, magazines, newspapers, radio broadcasts, or other media of communication. The CONSULTANT shall not, without the written approval of the CITY, disclose to others, publish or authorize anyone to publish any technical or confidential information acquired in the course of doing Work or rendering Services under this Agreement unless required by Vermont Statutes.
- H. Captions and paragraphs are added for the mere convenience of the parties. Both parties have had an opportunity for legal review prior to signing this document. This Agreement shall not be construed more strictly against the party responsible for the primary drafting of the document.
- I. In the event of litigation, attorney fees, shall be awarded to the prevailing party, including any and all attorney fees incurred by virtue of appellate review.