



**CITY OF MONTPELIER
MONTPELIER, VERMONT**

Agenda for Special City Council Meeting

City Council Chambers, City Hall
Wednesday, December 4, 2013
6:30 P.M.

- 1) Call to Order by the Mayor
- 2) 13-288. General Business and Appearances
- 3) 13-289. Consideration of the Consent Agenda:
 - a) Consideration of Minutes from the November 13, 2013 City Council Meeting. 
 - b) Payroll and Bills
- 4) 13-290. Discussion of District Heat Project with downtown merchants.
- 5) 13-291. Discussion of possible Dog Waste Ordinance.
- 6) 13-292. Discussion of possible use of Parking Revenue for bicycling improvements.
- 7) 13-293. Discussion of possible ballot item for tax exemption of alternate energy producing devices as per 32 VSA 3845. 
- 8) 13-294. City Council Reports
- 9) 13-295. Mayor's Report
- 10) 13-296. City Clerk's Report
- 11) 13-297. City Manager's Report
- 12) *Adjournment*

Minutes of the Montpelier City Council Meeting
November 13, 2013
Montpelier City Hall Council Chambers

In attendance: Mayor John Hollar (presiding), City Councilors Thierry Guerlain (via video chat), Jessica Edgerly Walsh, Alan Weiss, Andy Hooper, Tom Golonka and Anne Watson, and City Manager Bill Fraser. Assistant City Clerk Crystal Chase acted as Secretary of the meeting.

The mayor called the meeting to order at 6:30pm.

16-265. Phayvanh Luekhamhan from Montpelier Alive rose to introduce the new festival coordinator Ashley Witzemberger.

13-266. Councilor Edgerly Walsh moved passage of the consent agenda, and was seconded by Councilor Watson. The motion 6-0 passed at 6:33.

13-267. Ben Eastwood approached the council as the only applicant for appointment to the Conservation Commission, speaking of his love for the city and desire to keep Montpelier a pleasant place to live. He also noted his background and understanding of conservation and good attention to detail.

The Motion to Appoint Mr. Eastwood was made by Councilor Golonka and seconded by Councilor Hooper. Vote carried by a vote of 6-0.

13-268. Chief Facos reviewed the memo that was given to council on the parking fees. Council member Watson questioned the variation of the increase verses particular lots. Facos noted that the more desirable parking areas are getting the higher increase to help persuade folks to the less desirable lots. Watson also inquired about the use of "smart meters". Facos noted that smart meters are on the committee's radar but not for this budget cycle. Councilor Weiss asked for the Chief's feelings on the proposal from Montpelier Alive to give away more parking for holidays. The Chief noted that it was the council's decision to make. Councilor Guerlain wanted to know if the new funds would be used for repairing and repaving lots. Facos was not able to give a timeline for that but noted this would be the funding source for those types of projects. Mayor Hollar wanted to know what the deficit for each year is and what the forecast was for smart meters. Chief Facos stated that the deficit each year was in the ballpark of 30,000 and they are hoping to get smart meters in for FY16. Councilor Edgerly Walsh thought this would be a good opportunity to designate a small percentage (2% was giving as an example) for alternative transportation infrastructure. In Further discussion councilor Golonka was not comfortable linking this proposal into a budgetary item but thought it could be discussed when they start the budgeting discussions in the upcoming weeks.

Council Edgerly Walsh made the motion to pass the proposal with the amendment that 2% of revenue be used for alternative transportation infrastructure Councilor Guerlain seconded.

Councilor Golonka argued that the proposal is to simply raise the rates, not decide what to do with the money and still didn't see any reason to link the two motions.

Councilor Edgerly Walsh responded that she would be willing to withdrawal and table her amendment, but would like to add this discussion to the next meeting's agenda. The underlying motion to approve the proposal was still on the table and passed with a 6-0 vote.

- 13-269. Council Member Golonka spoke on behalf of committee stating that he thought the committee had had good success with this step and that the committee had reached its potential and looking to council for the next step. Discussion around other town's reactions to the PSA resulted from an inquiry from Council Member Watson. Council Member Watson stated that she would like to see a roadmap including budgeting as well as staffing. Golonka noted that there didn't necessarily need to be a vote on this tonight but it's still nice to get a feel from the council.

Mayor Hollar reiterated that they were just looking for preliminary support for moving forward, a straw vote was taken reflecting unanimous approval.

- 13-270. Mayor Hollar suggested that they give the charter discussion a time limit of a half hour. Council reviewed a subchapter at a time with brief discussions regarding subchapters 1, 6, 7, 8 and 9. Council then decided to table item picking up on sub section 10 at the next council meeting.

- 13-272. Council Member Weiss wanted to first note that the ordinance around this committee states that a budget would be prepared, and they had not seen a budget. Phil Zalinger, committee chair, noted that their budget revolves around what projects are brought before them, so there is no way to project a budget. Councilor Golonka requested that guidelines be put together, but said he was willing to support current requests as he felt they met the objective of committee. Hooper concurred with Golonka but shared that he had heard some concerns from store owners about the placement of the benches and how they relate to smoking in the area. Kevin Casey, committee member, said that approved items will go to Montpelier Alive for implementation. Council member Weiss voiced his concern about the budget differential between the 20,000 that was stated and the 12,000 that is being asked for. Phayvanh Luekhamhan responded that they are only asking for the 12,000 because they are confident they can raise 8,000 on their own. Council member Guerlain wants to see the committee come up with a plan on what would be most beneficial to spend the money on rather than just holding a bucket of money waiting for proposals. Linda Setchell came before council to ask that they create

a master plan and to state that money should be used in most efficient and effective way. She also wanted to mention that she has seen a lot of conflict of interest in the committee that needs to be addressed. Golonka addressed her concern stating that maybe an ethics clause should be added to the committee. Chair Zalinger followed up by saying that if there was ever conflicts of interest in a certain project people recuse themselves.

Mayor Hollar suggested that more discussion was needed on the structure of the DID, but that they should go forward with what was before them.

Councilor Hooper moved approval, seconded by Councilor Edgerly Walsh. Vote 4-2 with Councilors Weiss & Guerlain opposed.

- 13-273. Phayvanh Luekhamhan, Montpelier Alive director, let the council know that the holiday expenditure proposals on the table could be considered as a whole or a-la-carte. City Manager Fraser noted that this was coming from surplus funds and was a one-time deal, not an annual commitment. There was some discussion on the implementation of the proposed downtown incentives. Ms. Luekhamhan told council that she would take comments back to committee and may do some revisions.

Council member Edgerly Walsh made a motion to approve the \$12,000 allocation. Councilor Hooper seconded. Motion carried 6-0.

- 13-271. Mayor Hollar opened public hearing on the 2014 VTRANS Transportation Alternatives Grant Application for sidewalk extensions on Elm Street, Northfield Street and Towne Hill Road, and with no comment the public hearing was closed.

Councilor Golonka moved that the council endorse and sign the resolution, and the motion was seconded by Councilor Weiss, passing by a vote of 6-0.

- 13-274. Councilor Hooper felt it was a great idea to revisit the DID.

Councilor Weiss attended the Veterans Day service and thought it was sincere, simple and short.

Councilor Watson felt that forming a transportation committee could be useful and also wanted to note that there are several committee members specifically on the parking, pedestrian and bike committee who's contact information is not available on the web site.

Councilor Edgerly Walsh also thought that revisiting the DID was a good idea.

- 13-275. Mayor Hollar reminded folks that the Carr lot committee would be meeting Friday afternoon

13-276. The Assistant City Clerk reminded residents that property taxes were due on Friday the 15th.

13-277. Assistant City Manager Jessie Baker gave a brief update on the district heating project, noting that road repair will begin in the next couple of weeks, weather depending. Councilor Golonka asked Baker if there was an update on the state's side of the project. Mr. Fraser responded that we had not received any updates.

Adjournment was moved by Councilor Weiss and seconded by Councilor Hooper, passing by a vote of 6-0.

Construction Zone

By William Fraser, City Manager
For Bridge, November 21, 2013

I would like to profoundly thank the visitors to, residents of and, mostly, merchants in Montpelier for your patient tolerance of the very intrusive and disruptive District Heat project from April through November. We at City Hall are fully aware of the many problems, inconveniences and business impacts that occurred. Working on such a large and complex project in a compact downtown with a short construction season is full of challenges.

District Heat Montpelier is an important project for the City for reasons which have been widely discussed. It will provide an opportunity for renewable, locally sourced energy to serve public and private buildings while stabilizing heat costs for participants – including all publicly funded entities along the route.

During the project we have endeavored to provide excellent project management and communications. Regardless of what we have done, we certainly acknowledge that our practices could always be improved. It is highly unlikely that we will have a project this far reaching, long lasting and complex at any time. Over the next few years, however, we will be reconstructing and repaving State St, replacing the Rialto Bridge on State Street, repaving Main Street and potentially expanding the heating system. Any comments and suggestions will certainly inform both our general communications improvements and project specific communication improvements in the future.

Communications:

Allow me to outline the City's efforts to date to communicate about the District Heat Montpelier construction, some worked more effectively than others:

- Weekly updates on a dedicated phone line – (802) 262-6200. This worked effectively until October 21st when the fiber optic line serving the city was cut. This resulted in a reboot of the city hall telephone system causing the initial April message to start playing again. We became aware of this problem last week. It has since been corrected and the proper messages are again playing.
- Weekly updates in the Manager's report for the Council, media, and public.
- These weekly updates were also published on a special page of the website for the construction project – linked directly off the City's homepage.
- Weekly updates to VTrans for them to include updates in their weekly "On the Road" segments in media venues across the State.
- Met with the Montpelier Business Association group at the start of the project to tell them what we knew at the time and outlined the communication channels listed above. Assistant City

Manager, Jessie Baker, has also started attending these meetings regularly to provide updates on all City projects.

- Offered to meet with anyone at any time about the construction and often did.
- Went door to door on Langdon Street to talk about the shutdown of that street.
- *Bridge* articles from April through November talked about this and all our other projects. The April piece outlined the communication plans in advance.
- Sent three emails to the Business Community since September through Montpelier Alive and the Montpelier Business Association. Our belief is that they have more comprehensive business email distribution lists than we have. With the Council's and my priority of improving communications and implementing a new website, building our own network of contacts will be a priority. But we will continue to count on these two main organizations in our City to help with outreach.

All of the above were consistent with, and exceeded, our announced communications plan in April. In hindsight, however, here are certainly additional steps that I should have taken such as sending the weekly updates directly to the merchant community and conducting more specific meetings for people to air concerns. I felt that people knew that we were always willing to listen but that may not have been sufficient.

A major challenge with communication was the constantly changing schedule of the contractor's work – which is their prerogative. We found ourselves in the position of communicating information that was accurate on Friday and had already changed by Monday or Tuesday.

One major communication failing was the emphasis on completion of the piping system in October rather than the completion of the entire project by November 30th. It seems clear that people did not expect the amount of construction that has occurred in the latter weeks. The contract always called for the placement of concrete slabs, sidewalk repair, final installation of building connections, and final paving during this time. I acknowledge that I did not realize the extent of the disruption necessary to complete the work once the mains were finished.

Project Management:

Given the large investment of funds involved, we placed major emphasis on the quality of the work. Recognizing the complexity and uniqueness of this project, the city instituted the following management practices:

- We hired two professional independent inspectors to be onsite every day to oversee construction and protect the City's interest.
- We ensured that the City's project engineer was assigned to work on this project full time since May. This engineer has significant construction management experience in both the private and public sector.

- We held weekly meetings between the contractor, DPW, Public Safety, and the City Manager's Office to manage week to week work of the project.
- And we held monthly budget review meetings between DPW and contractor to ensure that funds were spent appropriately.

Many questions were raised about why the contractor's schedule changed frequently. The contractor owns the "means and methods" of completing the project. This is standard practice on municipal construction projects and means that the contractor decides how, when and where resources are deployed on a project as long as they deliver a quality product per the contract. This is very typical on a construction project of this size.

Many factors can (and in this case did) impact where and how a contractor chooses to deploy resources. For example, on this construction project, the schedule changed at times due to weather events, underground utilities discovered that required redesigns on the engineering side, and the delivery of materials. Just because the location schedule changed, does not mean that there was a project failing. In fact, at times it means that the contractor is effectively and efficiently deploying the resources they do have when other resources or materials are not yet ready.

Questions have also arisen about why some areas were dug, filled, and re-dug. This project included very complicated construction and installation that required a series of installation procedures. The piping that is installed is sophisticated piping that involves a steel pipe requiring specialized welding. The welded pipe is then wrapped in several inches of insulation with alarm wires installed. Finally the whole thing is wrapped in a protective plastic sheeting. During installation it was common that an area had to be excavated, piping installed, welded, covered for the night to protect this sophisticated piping, re-dug, wrapped, covered for protection, re-dug to do alarm wire testing once a completion run of wiring was installed, and then finally covered. With the heat mains now complete, the contractor is currently re-excavating to install final paving and make minor final adjustments. I understand that this could be perceived as inefficient. In fact, it was the installation needed to ensure the quality of this sophisticated distribution system.

The other piece of work being completed is the connections within the user buildings. Obviously all piping must be inspected to assure that there is no leaking or problem in any building. Questions have been asked about the late time of the NECI service connection. The work connecting to the INSIDE of NECI involves going through their outdoor deck and almost dismantling it. NECI was reluctant to grant permission to go on their property until their outside seating system was essentially over for the season. This is a drastically different scenario than the work that was done in the public right of way for the rest of the project. When exploratory digging was performed, the contractor realized that they could not connect as originally designed. The needed changes drove the cost of this connection up significantly. Therefore there was a period of several weeks where NECI and the City were working together to determine whether this should be installed. When work was happening on private property (i.e. not in the City's right of way) the City and contractor tried to be very responsive to the needs of

the customers. In several cases the schedule changed to accommodate the particular needs of customers.

Some things did not go as well as planned. While the overall contract has always had a November 30th completion date, the original anticipation was that bulk of the underground pipe work would be completed by October 1st. That date was ultimately extended to October 18th. The extension was necessary due to some uncontrollable delays and the emphasis on overall project quality. It was important to get the installation correct this year so that we don't have to come back next year. The subsurface construction time certainly added to disruption in town and also resulted in more concentrated final work in order to meet the contract closing date.

We also had some challenges with the contractor about things like maintaining sidewalk access, parking of equipment, encroachment onto private property and communications with the city when something went awry. Most of those incidents were resolved but I am aware that some of them left a bad taste in people's mouths.

What's left?

During the week of November 18-22, the contractor will be finishing paving along Taylor, East State and Main Streets. Parking may be limited and traffic rerouted.

Contractors will also be finishing installation of the final concrete slabs on Langdon Street. These concrete slabs protect the heat main and valve structures in places where they are close to the surface of the road. During this period, parking may be limited and traffic may be detoured at Langdon Street to accommodate the machinery. After the final concrete slabs are in place, final paving will be completed on Langdon Street.

Finally, this week the contractor will finish flushing the distribution system. This involves pumping water into the distribution system and draining it to ensure the heat main is free of any debris. During this time residents will see large vacuum trucks working to pump water and parking may be disrupted.

The current schedule calls for the contractor to turn the system over to the City on Tuesday, November 26th. After Thanksgiving, the City will complete the commissioning and inspection process. The mini-system is expected to be functioning by early December. Work on the State's heating plant continues with the new biomass boilers expected to be functional by March. The fully integrated system will begin commercial operation for October 1, 2014.

Again, I must express my appreciation to all who put up with the seemingly endless project. The community will benefit from the stable costs of renewable energy for years to come but certainly had to tolerate a huge amount of downtown construction along with many other infrastructure projects which were occurring throughout the City.

Thank you for reading this article and for your interest in Montpelier city government. Please feel free to contact me at 802-223-9502 or wfraser@montpelier-vt.org with any questions or comments.

CHANGE ORDER FORM

CHANGE ORDER # 1

Project No. _____

Contract No. 1

CONTRACT TITLE: Montpelier District Heat Project

OWNER: City of Montpelier

CONTRACTOR: Kingsbury Companies, LLC.

Date: December 28, 2012

Agreement Date: December 28, 2012

ORIGINAL PRICE: \$4,247,376.60

Original Completion Date: May 27, 2013

The following changes are hereby made to the CONTRACT DOCUMENTS:

DESCRIPTION:

1. To adjust quantities, as mutually agreed upon in the pre-award meeting of November 13, 2012, which are the quantities shown on the signed Agreement and Notice of Award.
2. Issuance of Winter Shutdown, as requested by the Contractor in a letter dated December 28, 2012.
3. Adjusting the completion date to reflect the agreed upon date rising from conflicting dates in the contract documents.

JUSTIFICATION:

- A mutually agreed upon reduction of connections and quantities was discussed prior to award and is included in the attached, revised bid tabulation.
- The Contractor requested Winter Shutdown due to the winter weather conditions that make it unfeasible to perform construction activities. The anticipated startup date is April 15, 2013, weather dependent.
- To clarify the contract period to reflect that which was found in the Contract Documents with conflicting information. Contract period shall be as follows;

The district heating system and in-building conversions must be functional by September 30, 2013 with final completion by October 31, 2012 unless the period for completion is extended otherwise by the Contract Documents

PRICE: This C.O.⁽¹⁾ will (not change/increase/decrease)

the Contract Price By:

Current Contract Price per most recent C.O.:

The new Contract Price including this C.O. is:

\$ _____
\$ 4,247,376.60
\$ 4,247,376.60

TIME: Current Contract Calendar Days as per most recent C.O.:

DAYS 198

This C.O. will (~~not change~~/increase/decrease)

the Contract Calendar Days by:

The new Contract Calendar Days including this C.O. is:

The new Contract Completion Date is, therefore:

DAYS 109
DAYS 307
October 31, 2013

The attached Contractor's Revised Project Schedule reflects increases or decreases in Contract Time as authorized by this C.O. Stipulated price and time adjustment includes all costs and time associated with the above described change. Contractor waives all rights for additional compensation or time extension for said change. Contractor and Owner agree that the price(s) and time adjustment(s) stated above are equitable and acceptable to both parties.

REQUESTED BY: Kingsbury Companies, LLC.

SIGNATURES/APPROVALS:

Recommended By:

(Engineer)

Accepted By:

(Contractor)

Ordered By:

(Owner)

(1) C.O. means Change Order

Sandy Pitonyak

From: William Fraser
Sent: Monday, December 02, 2013 8:58 PM
To: L-Council
Subject: District Heat Information
Attachments: Kingsbury Contract.pdf; CO.1.pdf; Contract Extension Letter.pdf; Bridge - November 21, 2013.pdf; DHCouncilUpdate12 4 13_V2.pdf

In anticipation of Wednesday night's meeting, please find attached a memo from me (with help from our team) and some related documents.

I'd like to call to your attention one paragraph of the memo:

I made a key error in not publicizing this extension more broadly at this point. The information was contained in the September 20th City Manager's report but should have been more widely publicized. More importantly, I recently made an error in my *Bridge* article and at the last council meeting by saying that the contract end date had "always been November 30, 2013." I have no excuse other than that I mistakenly confused the October 31st date with November 30th. To be clear, the original substantial completion date was October 31, 2013 which was extended to November 18, 2013. This mistake had no impact on the actual construction work and its completion. I sincerely regret this error and the lack of specific publicity about this extension.

I am embarrassed that I messed this up. We just caught this last night and I wanted to let you know about it directly from me.

William J. Fraser, ICMA-CM
City Manager
City of Montpelier
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Montpelier, Vermont 05602
Phone: (802) 223-9502
Fax: (802) 223-9519
www.montpelier-vt.org
http://icma.org/en/icma/about/anniversary/life_well_run

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CITY HALL

CITY of MONTPELIER *Vermont*

THE CAPITAL CITY OF THE STATE OF VERMONT

Department of Public Works
City Hall, 39 Main Street
Montpelier, VT 05602
Phone (802)223-9508 FAX (802)223-9524
email: tlaw@montpelier-vt.org

September 23, 2013

John Christian
Kingsbury Companies, LLC
264 Mad River Park
Waitsfield, VT 05673

**RE: Montpelier District Heat
Contract Completion Date & Work Hours**

Dear Mr. Christian:

This letter is to address the contract completion date for the Montpelier District Heat project. As you are aware, the project was bid with a duration of 150 days, which would have made the completion date September 12, 2013. A contract extension was issued at the beginning of the project to adjust the completion date to September 30th, 2013, approximately two weeks. This was done in good faith to show the City's willingness to work with Kingsbury in allowing sufficient time to complete the work. Based on your last schedule, you are showing a substantial completion date of October 15th, 2013. The City is willing to grant a contract extension of two additional weeks and allow three days float time beyond your proposed schedule to bring the District Heat system into operation by Friday October 18th, 2013. However, no further extensions can be granted as it is imperative that the system be working by this date. This extension is understood to cover all rain days, modifications to the design and any other delays encountered during construction. This allows for working this Saturday, 9/28/13, but no work will be allowed on Columbus day, 10/14/13. If the system is not operational by October 18th, 2013, liquidated damages may be assessed.

While we are allowing the contract extension, we ask that you recognize the contract limits the work days to 10hrs. We are willing to allow flexibility on this issue to permit work between 7am and 7pm. However, no work activities shall take place outside of these hours without written permission from the City of Montpelier. In each instance that work takes place outside of these hours, one day will be deducted from this contract extension as you will be in violation of your contract with the City of Montpelier.

Sincerely,

Todd Law, P.E.
Director of Public Works

C: Bill Fraser, City Manager
Jessie Baker, Assistant City Manager



City of Montpelier, Vermont

"The Smallest Capital City in the United States"

Mayor John Hollar

City Council:

Tom Golonka, President
Thierry Guerlain, Vice President
Andy Hooper, Parliamentarian
Alan H. Weiss
Anne Watson
Jessica Edgerly Walsh

William J. Fraser
City Manager
wfraser@montpelier-vt.org

Jessie Baker
Assistant City Manager
jbaker@montpelier-vt.org

MEMORANDUM

To: Mayor Hollar & City Council Members
From: William Fraser, City Manager

With assistance from:
Jessie Baker, Assistant City Manager
Todd Law, Public Works Director
Kurt Motyka, City Engineer
Re: Update on District Heat Montpelier Construction
Date: December 2, 2013

On Wednesday, November 27, 2013 Kingsbury Companies, LLC turned over the District Heat Montpelier distribution system to the City of Montpelier. This signified the end of this year's District Heat construction season and the opportunity for the City to start the mini-system being run out of City Hall for this heating season. Over the last few weeks we have received several questions from members of the public and business owners. We would like to take this opportunity to address some of these concerns.

We'd like to, again, thank the visitors to, residents of and merchants in Montpelier for their patient tolerance of the very intrusive and disruptive District Heat project from April through November. We are full aware of the many problems, inconveniences and business impacts that occurred.

How is this project different from usual City water/sewer utility projects?

The specialized piping for the District Heat distribution system is very sophisticated and requires a series of installation procedures. Because this construction project was the first of its kind on the East Coast, neither the contractor, local engineers or city officials had experience with these systems. We were guided by the expertise of EverGreen Energy who operates the District Heat St. Paul system using the same technology. EverGreen Energy was a subcontractor to Hallam-ICS and designed the majority of the system. This piping system required construction that was significantly different than a normal water utility job. The piping involves a steel pipe needing specialized welding. The welded pipe is then wrapped in several inches of insulation with alarm wires installed. Finally the whole joint is wrapped in a protective plastic sheeting. On this project, over 10,000 feet of pipe was

installed in the City with more than 900 welded joints. Each weld required an inspection, testing protocol, and wrapping process. This is far more extensive than normal water pipe joining. Additionally, the pipes came in 40 foot pieces that are much more difficult to handle and install than standard 13 foot water pipes. Finally, whereas with water pipe installation, if an underground utility is discovered a quick redesign lets the contractor install the pipe above or under the utility very quickly. With this hot water pipe, redesigns required that the engineers take into consideration expansion and the slope of the pipe. On a normal water pipe job, a contractor can typically install 300 to 500 feet of pipe a day. On this project, the contractor averaged 40 to 80 feet of pipe a day.

Several observers noted that it appeared that areas were dug, filled and re-dug. During installation it was common to excavate, install piping, weld the joints and then cover the system for the night. The next day the contractor re-excavated the piping, insulated, tested and wrapped the joints. In some instances, when the heat main was complete, the contractor then had to re-excavate to install concrete structures to protect the pipe, do final paving and make minor final adjustments. We understand that this could be perceived as inefficient. In fact, it was the installation needed to ensure long lasting quality of the distribution system.

Who wrote the contract between the City of Montpelier and Kingsbury Companies, LLC?

As with most large construction contracts, contract engineers for the City, wrote the bid and contract documents. In this case, using the model language from the recent force main contract paid for by FEMA, Hallam-ICS and DeWolfe Engineering wrote these documents. This was reviewed by the Department of Public Works. These documents mirror standard construction documents in the State of Vermont.

How much is the contract with Kingsbury Companies, LLC?

Kingsbury Companies, LLC was the low bidder on the District Heat Montpelier construction project. The total bid price was \$4,247,376 including water work and the installation of service laterals. Of this, the construction cost of the heat distribution system was approximately \$3,700,000. The City is still in the process of evaluating and finalizing the change orders for the Kingsbury contract. However, it is our belief that these change orders will result net to not less than \$60,000 or under 2% of the original contract. Without the benefit of the November financials, the overall project costs appear to right at budget.

What does the contract with Kingsbury Companies, LLC say about the schedule?

The bid documents originally published by the City of Montpelier indicated a 150 day construction period. However, the award and execution of the contract specified completion dates not any set number of construction days.

The contract was awarded to Kingsbury Companies, LLC on December 28, 2012. On December 28, 2012 with Change Order #1, the project immediately went into winter shutdown with work to resume on April 15, 2013. This Change Order stated:

The district heating system and in-building conversions must be functional by September 30, 2013 with final completion by October 31, 2013 unless the period for completion is extended otherwise by the Contract Documents.

This Change Order updated the previously incorrect typographical error informant in Addendum 2 of the bid package incorporated into the Kingsbury contract where the dates are defined as follows:

3.4 SPECIFIC DATES

A. *Beneficial Use: September 30, 2012*

B. *Substantial Completion: October 31, 2012*

In September 2013, the decision was made to extend these contract dates. There were several rationales for this decision:

- The City determined that under the contractual terms there was reason to award an extension (see Section 15 of the General Conditions cited below.) Specifically, the City found that the contractor was entitled to 13 extra work days toward beneficial use as a result of rain days early in the project and redesigns that were required as a result of discovered underground utilities.
- The decision had been made to delay the startup of the connection to the State's Heat Plant until October 2014.
- Customers were committed to having the means to heat themselves during the 2013-2014 heating season.
- Kingsbury submitted a request to extend this beneficial use date to October 31, 2013.

The City issued an extension in the form of a letter from Department of Public Works Director, Todd Law, to Kingsbury Companies, LLC dated September 23, 2013. This letter stated:

The City is willing to grant a contact extension of two additional weeks and allow three days float time beyond your proposed schedule to bring the District Heat system into operation by Friday October 18th, 2013....This extension is understood to cover all rain days, modifications to the design and any other delays encountered during construction....If the system is not operational by October 18th, 2013, liquidated damages may be assessed.

At this point, both the City and Kingsbury understood this to mean that the heat main would be completed by October 18, 2013 and Kingsbury would be done with all other work (installing valve structures, repaving, and reconstituting the sidewalks) by November 18, 2013 thereby maintaining the month allowed between beneficial use and substantial completion.

I made a key error in not publicizing this extension more broadly at this point. The information was contained in the September 20th City Manager's report but should have been more widely publicized. More importantly, I recently made an error in my *Bridge* article and at the last council meeting by saying that the contract end date had "always been November 30, 2013." I have no excuse other than that I mistakenly confused the October 31st date with November 30th. To be clear, the original substantial completion date was October 31, 2013 which was extended to November 18, 2013. This mistake had no impact on the actual construction work and its completion. I sincerely regret this error and the lack of specific publicity about this extension.

As of Monday, December 2, 2013 the heat distribution system has been turned over to the City of Montpelier from Kingsbury Companies, LLC. The City and its commissioning agents are in the process of filling, commissioning, and starting up the mini-system. The parties are in the process of determining beneficial use and substantial completion status.

Why couldn't the contractor finish earlier?

There are two ways the contractor could have completed the job more quickly. Neither of those would have been optimal for the City of Montpelier.

- The contractor could have put more staff on the job. This would have required another crew working in the City with another set of machinery. Given the very small nature of our downtown, another crew working in the City would have required that more segments of our downtown roads would be completely closed. This was not an option the City wanted to entertain since, unlike Barre, there is no vehicular bypass. The City asked that traffic flow be maintained as much as possible.
- The contractor could have worked longer hours, on weekends or at night. As it was the contractor was often working from 7 am to 6 pm and occasionally later. During the few weekend work days or late evening work days, we received many complaints. Night work was a very poor option for impact on residents, safety of the workers and the quality of the product. As mentioned above, this work requires sophisticated welding, inspection and waterproofing that is difficult if not impossible to do acceptably in the dark – even with construction lighting

Throughout the project, the City of Montpelier and Kingsbury Companies, LLC worked together to be as efficient as possible while still maintaining the contractors rights to means and methods and enabling the activities of our vibrant downtown. Often the City requested the contractor change work patterns to take into consideration City events (July 3rd, the Corporate Cup, Columbus Day weekend, etc.) and the contractor was always very cooperative.

Why did the schedule change so much?

One major challenge with communication was the constantly changing schedule of the contractor's work – which is their prerogative. We found ourselves in the position of communicating information that was accurate on Friday and had already changed by Monday or Tuesday. The contractor owns the “means and methods” of completing the project. This is standard practice on municipal construction projects and means that the contractor decides how, when and where resources are deployed on a project as long as they deliver a quality product per the contract. This is very typical on a construction project of this size.

Many factors can (and in this case did) impact where and how a contractor chooses to deploy resources. For example, on this construction project, the schedule changed many times due to weather events, and more often underground utilities discovered that required redesigns on the engineering side, and the delivery of materials. When those circumstances occurred, the contractor moved to another location to complete more work. Just because the location schedule changed, does not mean that there was a project failing. In fact, it means that the contractor is effectively and efficiently deploying the resources they do have when other resources or materials are not yet ready.

What is the mini-system? And what is commissioning?

In early fall the decision was made to run a “mini-system” off of the City Hall boilers for the 2013-2014 heating season. This mini-system will heat City Hall, the Fire Station, the Police Station, Union Elementary, FairPoint, and Vermont Mutual. Starting Tuesday, December 3rd, the City's commissioning agents from Hallam-ICS as well as the City's experts from EverGreen Energy in St. Paul, Minnesota are working to start-up and commissioning the mini-system. Commissioning is a

key part of the startup process. During this process, independent experts are hired to test each operational component of the system and ensure they are working to specifications. This process confirms that we received a quality product from the contractors. Additionally, during this time, Department of Public Works staff will receive extensive training on running the system. Customers of the mini-system can expect to start receiving heat by December 9, 2013.

What does the contract with Kingsbury Companies, LLC say about liquidated damages?

The agreement between the City of Montpelier and Kingsbury Companies, LLC states:

The CONTRACTOR acknowledges that the date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the CONTRACTOR further agrees to pay as liquidated damages, the sum of \$1,600 if beneficial use is not achieved prior to September 30, 2013 and \$1,000 if project does not meet final completion date for each consecutive calendar day that the CONTRACTOR shall be in default after the time specified in the Agreement and as provided in Section 15 of the General Conditions.

Section 15 of the General Conditions goes on to say:

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the contractor will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1 To any preference, priority or allocation order duly issued by the OWNER;

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a CONTRACT with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

Over the last months, the City's focus has been on ensuring that a quality product is delivered to the City and the District Heat Montpelier customers. It is standard practice at the conclusion of construction to review all aspects of the job and consider all options. That is happening now. No decisions have yet been reached given the experience of construction this summer and the contract provisions outlined above.

Will there be any District Heat Montpelier construction work done next year?

Yes. Next year's work will include final paving on Taylor St., in the parking lots behind the Fire Station, and behind the State office buildings. Additionally, there will be some corrective paving at State and Elm and Langdon and Main. There will also be work done to install topsoil, seed and mulch in several areas, do sidewalk and curb replacement on State St. that has settled (in front of the movie theatre) and a possible excavation on Main or Langdon to correct the wire alarm system

problems. There is also some sidewalk on School St. that will need to be evaluated for replacement in the spring. This “punch list” work will be closely monitored by the City Engineer.

What about the start-up of the State’s Biomass Plant?

The State’s construction on the Biomass Plant is continuing. The City participates in weekly construction meetings with the State and their construction managers, Engelberth Construction Inc. The City and State teams are meeting this week to discuss the schedule for the start-up and commissioning of the State’s Biomass Plant, the training of City staff, and an anticipated date at which point the State will be ready to provide biomass heat to the City’s distribution system. It is still anticipated that the fully integrated system will begin commercial operation for October 1, 2014.

Hallam/ICS	Montpelier District Heating City of Montpelier, VT	Issue Date: September 28, 2012	
Title: Project Manual			Page #: 1 of 1

City of Montpelier
39 Main Street
Montpelier, VT 05602

October 03, 2012

**CONSTRUCTION of a DISTRICT HEATING SYSTEM, HOT WATER CONVERSION AND CONNECTIONS
CITY of MONTPELIER, VERMONT**

ADVERTISEMENT FOR BIDS

The City of Montpelier is requesting bids for the construction of a district heating system with approximately one mile of trench length of hot water piping, connections and conversions of three public buildings to use district heating water and several district heating service laterals to non-City controlled buildings.

Work to be performed under this contract consists of the construction of approximately one mile of trench including supply and return thin wall, carbon steel, pre-insulated district heating pipe, ranging from 8" to 1.5" inside diameter in both system mains and service laterals. This new piping system will run between the State of Vermont's heating plant, through City streets and extend to Union Elementary School and City Hall, with service laterals and spurs branching off to serve non-City customers. The work includes restoration of the surface conditions after pipe installation. In addition, this project includes converting the Union Elementary from a low pressure steam heating system to a hot water heating system. Finally, this project includes connecting and converting the Police Department and the City Hall buildings to the district heating system and modifying their internal heating systems to use the district hot water.

Because the area of construction will be the City streets, the contract includes the reconstruction of the bituminous asphalt paved surfaces, concrete sidewalks, removal/reset of granite curbs, restoration of turf areas and related traffic control.

Sealed bids will be received at the Office of the Director of Public Works, City Hall, 39 Main Street, Montpelier, VT 05602, until **10:00 am (Eastern) Thursday, November 01, 2012**, at which place and time, bids will be opened and publicly read aloud. Each sealed bid must be clearly marked "**BID – Montpelier District Heating System.**"

Each bid must be accompanied by a certified check made payable to the City of Montpelier for five percent (5%) of the total amount of the bid. A bid bond may be used in lieu of a certified check. A 100% performance bond in the amount of the accepted base bid is required.

PDF files of the complete contract documents and specifications can be downloaded for free from the City of Montpelier website. Paper copies of the complete contract documents and specifications are available to interested parties for \$150.00 (check only) at the following location:

Public Works Office, City Hall
39 Main Street
Montpelier, VT
802-223-9508.

William Fraser, City Manager
City of Montpelier

**CONSTRUCTION of a DISTRICT HEATING SYSTEM, HOT WATER CONVERSION AND CONNECTIONS
CITY of MONTPELIER, VERMONT**

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INFORMATION FOR BIDDERS

The City of Montpelier will receive sealed bids for a Contract entitled **"BID – Montpelier District Heating System."** at the Office of the Director of Public Works, City Hall, 39 Main Street, Montpelier, VT 05602, until **10:00 am (Eastern) Thursday, November 01, 2012.**

Preparation of Bids

Bids will be submitted in a sealed envelope clearly marked, **"BID – Montpelier District Heating System."** on the outside of the envelope, and delivered to the Office of the Director of Public Works, City Hall, 39 Main Street, Montpelier, Vermont 05602. The outside of the envelope shall also clearly bear the name and address of the bidder. All bids must be made on the required bid form. All blank spaces on the bid form must be fully completed and executed when submitted. Only one copy of the bid form is to be submitted.

Any bid may be withdrawn prior to the duly scheduled time for the opening of bids. Any bid received after the time and date specified shall not be considered.

Site Visit

Prior to the opening of Bids, it is assumed that each Bidder will have inspected the site area, the roadways, the planned locations for service laterals, the City buildings to be connected to the system, adjacent properties and become thoroughly familiar with the Contract Documents, existing field conditions, and limitations. Bidders must satisfy themselves of the accuracy of the estimated quantities identified on the bid form by examination of the site and review of the contract drawings and specifications. Failure of the Bidder to review all documents and field conditions pertinent to the Contract, including ADA compliance requirements, shall in no way relieve any Bidder from the obligation with respect to his/her Bid and the bidder shall not assert that there was a misunderstanding concerning quantities or the nature of the work to be done.

Bid Surety & Performance Bond

Each bid must be accompanied by a certified check payable to the owner for five percent of the total amount of the bid. As soon as the bid prices have been compared, the owner will return the certified checks of all except the three lowest responsive, responsible bidders. When a contract agreement is executed, as authorized by the Montpelier City Council during a regularly scheduled meeting, the certified checks of the remaining unsuccessful bidders will be returned. The certified check of the successful bidder will be retained until the contract agreement documents have been signed and the performance bond has been executed and approved, after which it will be returned. A bid bond may be used in lieu of a certified check.

The party to whom the contract is awarded will be required to execute the contract agreement and obtain the performance bond within ten (10) calendar days from the date when the notice of award is delivered to the bidder. In case of failure of the bidder to execute the agreement, the owner may, at its option, consider the bidder in default, in which case the bid bond or certified check accompanying the bid proposal shall become the property of the owner.

The owner, within ten days of receipt of the bonds, shall sign the agreement, having first obtained authorization from the Montpelier City Council. Should the owner not execute the agreement within such period, the bidder may notify the owner in writing that the contract agreement will be withdrawn.

Bodily Injury Liability and Property Damage Liability Insurance

The Contractor shall take out and maintain during the life of this Contract such Comprehensive General Bodily Injury Liability and Property Damage Liability Insurance and Automobile Bodily Injury Liability and Property Damage Liability as shall protect him/her and any subcontractor performing work covered by this Contract for claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this Contract, whether such operations are performed by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. The limits of liability for the above insurance requirements and more detailed information are contained in the General Conditions attached hereto and made a part of hereof.

Award of Contract

The Contract will be awarded to the responsible and eligible Bidder submitting the lowest Bid, as determined by the City per the current policy and subject to receipt of bonds as described above. The Contract will be awarded within thirty (30) days after the Bid receipt deadline unless a mutually agreed upon extension is established. The City may make such investigations as it deems necessary to determine the ability of the bidder to perform the work and the bidder shall furnish to the City, all such information and data for this purpose as the City may request. The City reserves the right to reject any or all Bids, or to waive any informalities or technicalities in any Bid in the interest of the City and may reject any bid if the evidence obtained through the course of an investigation of a bidder fails to satisfy the City that the bidder is properly qualified to carry out the obligations of the agreement and to complete the work. A conditional or qualified bid will not be accepted.

The City also reserves the right to limit or extend the amount of work to be done due to budget limitations, or for other reasons. (See also General Conditions.)

Traffic & Pedestrian Control

The Contractor will provide traffic control devices and will be responsible to provide traffic control personnel when required by the City and as determined by the job conditions. Reference is made to the "Manual of Uniform Traffic Control Devices (MUTCD) - Traffic Control in Work Zones." Special ADA compliant pedestrian detours around the work zones will also be required. ^ The Contractor is solely responsible to maintain a safe work zone in full compliance with the MUTCD. Failure to do so may result in a written notification to discontinue work until compliance is achieved.

The Contractor will coordinate all work on the City owned property with the City. Work on City and non-City property will be conducted in a manner which minimizes interruption of facility operation as well as traffic into and out of the facility. Construction is to be conducted in a phased manner. The intent of the phasing is to allow the contractor flexibility to complete the project as efficiently as possible while being sensitive to maintaining free use of the City streets for travel, commerce and recreation through the scheduled construction. It is understood that portions of the City streets and sidewalks will have to be closed for a period of time. The contractor must maintain at least one access to businesses at all times during construction. The Contractor is to work with the City to maintain a safe and secure work area while also allowing access to undisturbed or recently completed portions of the project. Particular attention shall be paid to providing safety barricades, fencing and or walkways around excavated areas to protect pedestrians from work area hazards. Protection of green concrete from damage or vandalism is entirely the Contractor's responsibility. No additional compensation will be provided for any precautions taken by the Contractor. Work hours within the City streets ^ will be limited to 7:00am - 3:30pm unless written permission is otherwise granted by the City or property owner.

Testing Payment Provisions

For all compaction and leakage or other testing required by this contract, the Owner shall bear the cost of the initial test. Should the initial test fail, the Contractor shall be responsible for all subsequent tests necessary to determine that the tested installed item meets the project specifications.

Termination of Contract

The Contract may be terminated by the City upon written notice to the Contractor on a specified date if the Contractor:

1. Fails to begin work within the specified time;
2. Fails to pursue the work in a manner to ensure proper completion;
3. Pursues the work in a manner to render the completed project unsuitable to the City;
4. Discontinues work on the project.

Commencement & Completion Dates

The project may be commenced upon issuance of a notification to proceed. The district heating system and in-building conversions must be functional by September 30, 2013 with final completion by October 31, 2012. The notification to proceed shall be issued within ten (10) days from the execution of the agreement. Should there be reasons why the notice to proceed cannot be issued within such period, the issuance date may be negotiated by mutual agreement between the owner and contractor.

The Contractor shall not commence work under this Contract until the insurance required hereunder has been obtained, and such insurance has been approved by the City; nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by the City shall not relieve or decrease the liability of the Contractor hereunder. (See also General Conditions.)

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, Kingsbury Companies, LLC. as Principal, and The Ohio Casualty Insurance as Surety, are hereby held and firmly bound unto City of Montpelier Dept of Public Works OWNER in the penal sum of 5% of Bid Attached for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this 1st day of November, 2012. The Condition of the above obligation is such that whereas the Principal has submitted to City of Montpelier Dept of Public Works a certain BID,

attached hereto and hereby made a part hereof to enter into a contract in writing, for the District Heating System, Hot Water Conversion and Connections

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Kingsbury Companies, LLC.
264 Mad River Park
Waitsfield, VT 05673 (L.S.)

Principal

The Ohio Casualty Insurance Company
9450 Seward Ave
Fairfield, OH 45013

Surety

By: Adam C. Osha, Attorney-In-Fact

IMPORTANT - Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

NOTICE OF AWARD

TO: Kingsbury Companies, LLC
264 Mad River Park
Waitsfield, Vermont 05673

PROJECT Description:

Construction of the Montpelier District Heating System, Hot Water Conversion and Connections, City of Montpelier, Vermont.

The OWNER has considered the BID submitted by you for the above described WORK in response to its ADVERTISEMENT FOR BIDS dated November 5, 2012, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$ 4,247,376.60.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this NOTICE to you.

If you fail to execute said Agreement and to furnish said BONDS within ten (10) days from the date of this NOTICE, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE TO AWARD to the OWNER.

Dated this 28th day of December, 2012.

City of Montpelier
Owner

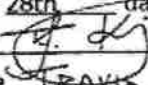
By 
Title City Manager

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by Kingsbury Companies, LLC

this 28th day of December, 2012.

By 
Title TRAVIS KINGSBURY - PRESIDENT



CERTIFICATE OF LIABILITY INSURANCE

OP ID: JZ

DATE (MM/DD/YYYY)

12/21/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Kinney Pike/Hartford The Junction Market Place 1011 North Main Street White River Junction, VT 05001 Adam Osha	802-295-3329 802-296-6126	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: KINGS01	FAX (A/C, No):
INSURED Kingsbury Companies LLC 264 Mad River Park Waitsfield, VT 05673		INSURER(S) AFFORDING COVERAGE INSURER A: Acadia Insurance INSURER B: Star Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 31325	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	X	CPA0372354-11	01/01/12	01/01/13	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 250,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOF AGG \$ 2,000,000
A	☒ AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS		CAA0372358-11	01/01/12	01/01/13	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ 500,000
A	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DEDUCTIBLE RETENTION \$ 10000		CUA0372359-11	01/01/12	01/01/13	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	WC0452692	01/01/12	01/01/13	☒ WC STATUTORY LIMITS ☐ OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	Property Section		CPA0372354-11	01/01/12	01/01/13	Contents 20,800
A	Leased Equipment		CIM0266538-13	01/01/12	01/01/13	Leased Eq 250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder is named Additional Insured with respect to General Liability to the extent required in executed written contract RE: Montpelier District Heating System. Workers Compensation Statutory coverage applies in Vermont and no excluded officers.

CERTIFICATE HOLDER**CANCELLATION**

CITYMON

The City of Montpelier
City Hall
39 Main Street
Montpelier, VT 05602

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS

AUTHORIZED REPRESENTATIVE
Adam Osha

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AGREEMENT

THIS AGREEMENT, made this 28th day of December, 2012, by and between

City of Montpelier, hereinafter called "OWNER" and

Kingsbury Companies, LLC doing business as (an individual, a partnership or a corporation) hereinafter called "CONTRACTOR".

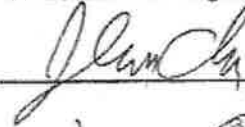
WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of the **Montpelier District Heating System**.
2. The CONTRACTOR will furnish all the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.
3. The CONTRACTOR will commence the WORK required by the CONTRACT DOCUMENTS on the date of issuance of the NOTICE TO PROCEED and will complete the same by September 30, 2013 unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS. The CONTRACTOR acknowledges that the date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the CONTRACTOR further agrees to pay as liquidated damages, the sum of \$ 1,600 if beneficial use is not achieved prior to September 30, 2013 and \$1,000 if project does not meet final completion date for each consecutive calendar day that the CONTRACTOR shall be in default after the time specified in the Agreement and as provided in Section 15 of the General Conditions.
4. The CONTRACTOR agrees to perform all the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$ 4,247,376.60 or as shown in the BID schedule.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - (A) Advertisement for BIDS
 - (B) Information for BIDDERS
 - (C) BID
 - (D) BID BOND
 - (E) Agreement
 - (F) General Conditions
 - (G) Supplemental General Conditions
 - (H) Payment BOND
 - (I) Performance BOND
 - (J) NOTICE OF AWARD
 - (K) NOTICE TO PROCEED
 - (L) CHANGE ORDER
 - (M) DRAWINGS prepared by Hallam-ICS, Ever-Green Energy and DeWolfe Engineering Assoc. numbered CQ.01 through E2.3.3, and dated September 28, 2012.
 - (N) SPECIFICATIONS prepared or issued by City of Montpelier, and dated October 3, 2012.
 - (O) ADDENDA:
 - No. 1, dated October 12, 2012.
 - No. 2, dated October 17, 2012.
 - No. 3, dated October 22, 2012.
 - No. 4, dated October 25, 2012.
 - No. 5, dated October 28, 2012.

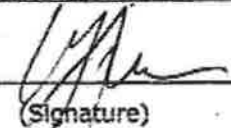
6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in 3 copies, each of which shall be deemed an original on the date first above written.

OWNER: City of Montpelier

ATTEST: 

(Signature)

BY: 

(Signature)

Name: JOHN EDUM

(Please print)

Name: William J. Fraser, ICMA-CM

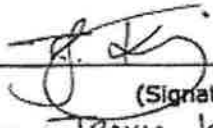
(Please print)

(Seal)

Title: City Manager

Title: CITY CLERK

CONTRACTOR: Kingsbury Companies, LLC.

BY: 

(Signature)

Name: TRAVIS KINGSBURY

(Please print)

(Contractor Seal)

Address: 264 Mad River Park

Waitsfield, Vermont 05673

ATTEST: 

(Signature)

Name: John Christen

(Please print)

Title: Project Manager

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS THAT:

Kingsbury Companies, LLC

(Name of Contractor)

264 Madriver Park, Waitsfield, VT 05673

(Address of Contractor)

a Corporation, hereinafter called Principal,
(Corporation, Partnership or Individual)

and The Ohio Casualty Insurance Company

(Name of Surety)

9459 Seward Ave, Fairfield, OH 45013

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto The City of Montpelier, City Hall, 39 Main Street, Montpelier, Vermont 05602 hereinafter called OWNER, in the penal sum of Four Million Two Hundred Forty Seven Three Hundred Seventy Six Dollars, \$(4,247,376.60) in lawful money of the United States, and for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the 28th day of December, 20 12, a copy of which is hereto attached and made a part hereof for the construction of the Montpelier District Heating System.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK and all insurance premiums on said WORK, and for all labor performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed hereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in 3 counterparts, each one of which shall be deemed an original, this the 28th day of December, 20 12.

ATTEST:

Kingsbury Companies, LLC
Principal's Printed Name

(Principal Secretary)

By: _____ (s)

(Seal)

Address: 264 Madriver Park

Waitsfield, VT 05673

Witness as to Principal

264 Madriver Park

Address

Waitsfield, VT 05673

ATTEST:

Christie M. Brown

Witness as to Surety

1011 North Main St., Ste 4

White River Jct., VT 05001

Address

The Ohio Casualty Insurance Company
Surety

By:

Adam C. Osha Attorney-in-Fact

Address: 1011 North Main St., Ste 4

White River Jct., VT 05001

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570) as amended and be authorized to transact business in the State where the PROJECT is located.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS THAT:

Kingsbury Companies, LLC

(Name of Contractor)

264 Madriever Park, Waitsfield, VT 05673

(Address of Contractor)

a Corporation, hereinafter called Principal, and

(Corporation, Partnership or Individual)

The Ohio Casualty Insurance Company

(Name of Surety)

9450 Seward Ave, Fairfield, OH 45013

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the City of Montpelier, Vermont (hereinafter called **OWNER**) City Hall, 39 Main Street, Montpelier, Vermont in the penal sum of Four Million Two Hundred Forty Seven Three Hundred Seventy Six and 60/100 Dollars, \$4,247,376.60 in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the 28th day of December, 2012, a copy of which is hereto attached and made a part hereof for the construction of the Montpelier District Heating System.

NOW, THEREFORE, if the principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed hereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in 3 counterparts, each one of which shall be deemed an original, this the 28th day of December, 2012.

ATTEST:

Kingsbury Companies, LLC

Principal's Printed Name

(Principal Secretary)

(s)

By: _____

Address: 264 Madriever Park

(Seal)

Waitsfield, VT 05673

Witness as to Principal
264 Madriver Park

Address
Waitsfield, VT 05673

ATTEST:

Christine M. Starn
Witness as to Surety

1011 North Main St., Ste 4

White River Jct., VT 05001

Address

The Ohio Casualty Insurance Company

By: [Signature]
Adam C. Osha Surety
Attorney-in-Fact

Address: 1011 North Main St., Ste 4

White River Jct., VT 05001

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570) as amended and be authorized to transact business in the State where the PROJECT is located.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

5224751

Certificate No. _____

American Fire and Casualty Company
The Ohio Casualty Insurance Company
West American Insurance Company

Liberty Mutual Insurance Company
Peerless Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of Ohio, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, that Peerless Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, PEGGY A. HUNT, DEBORAH J. POLJACK, PETER J. WERNER, DANIELLE M. MARTIN, SANDRA D. DELISLE, ADAM C. OSHA, CHRISTINE M. SLOCUM, MARSHA SPEAR,

all of the city of RUTLAND, state of VERMONT each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 7th day of March, 2012.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
Peerless Insurance Company
West American Insurance Company

By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON
COUNTY OF KING

On this 7th day of March, 2012, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, Peerless Insurance Company and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.



By: KD Riley
KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, West American Insurance Company and Peerless Insurance Company, which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorney-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, whenever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, West American Insurance Company and Peerless Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 28th day of December, 2012.



By: David M. Carey
David M. Carey, Assistant Secretary

NOTICE TO PROCEED

To: Kingsbury Companies, LLC
(Contractor)
264 Mad River Park
Waitsfield, Vermont 05673

Date of Issuance: December 28, 2012

Project: City of Montpelier District Heating, Hot Water
Conversion and Connections

You are hereby notified to commence all WORK on this date in accordance with the Agreement dated December 28, 2012. The date of completion of all WORK is May 27, 2013.

City of Montpelier

(Owner)

By: 

Title: City Manager

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED

is hereby acknowledged by Kingsbury Companies, LLC

(Name of Contractor)

this the 28th day of December, 2012

By: T.J. Kingsbury

(Printed or Typed Name)

By: 

(Signature)

Title: President

CHANGE ORDER FORM

CHANGE ORDER # _____

Project No. _____

Date: _____

Contract No. _____

Agreement Date: _____

CONTRACT TITLE: _____

ORIGINAL PRICE: \$ _____

OWNER: _____

Original Completion Date: _____

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

DESCRIPTION:

JUSTIFICATION:

PRICE: This C.O.⁽¹⁾ will (not change/increase/decrease)

the Contract Price By:

\$ _____

Current Contract Price per most recent C.O.:

\$ _____

The new Contract Price including this C.O. is:

\$ _____

TIME: Current Contract Calendar Days as per most recent C.O.:

DAYS _____

This C.O. will (not change/increase/decrease)

the Contract Calendar Days by:

DAYS _____

The new Contract Calendar Days including this C.O. is:

DAYS _____

The new Contract Completion Date is, therefore:

The attached Contractor's Revised Project Schedule reflects increases or decreases in Contract Time as authorized by this C.O.

Stipulated price and time adjustment includes all costs and time associated with the above described change. Contractor waives all rights for additional compensation or time extension for said change. Contractor and Owner agree that the price(s) and time adjustment(s) stated above are equitable and acceptable to both parties.

REQUESTED BY: _____

SIGNATURES/APPROVALS:

Recommended By: _____ (Engineer)

Accepted By: _____ (Contractor)

Ordered By: _____ (Owner)

(1) C.O. means Change Order

PAYMENT REQUEST FORM

FORM APPROVED
OMB NO. 0575-0042

Form RD 1924-18 (Rev. 6-97)		UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT FARM SERVICE AGENCY PARTIAL PAYMENT ESTIMATE		CONTRACT NO. _____ PARTIAL PAYMENT ESTIMATE NO. _____ PAGE _____	
OWNER _____		CONTRACTOR: _____		PERIOD OF ESTIMATE FROM _____ TO _____	
CONTRACT CHANGE ORDER SUMMARY				ESTIMATE	
No.	Agency Approval Date	Amount		1. Original Contract _____	
		Additions	Deductions	2. Change Orders _____ \$0.00	
				3. Revised Contract (1 + 2) _____ \$0.00	
				4. Work Completed* _____	
				5. Stored Materials* _____	
				6. Subtotal (4 + 5) _____ \$0.00	
				7. Retainage* _____	
				8. Previous Payments _____	
				9. Amount Due (6-7-8) _____ \$0.00	
TOTALS		\$0.00	\$0.00	* Detailed breakdown is attached	
NET CHANGE		\$0.00	\$0.00		
CONTRACT TIME					
Original (days) _____ Revised _____ Remaining _____		On Schedule ☐ Yes ☐ No Starting Date _____ Projected Completion _____			
CONTRACTOR'S CERTIFICATION: The undersigned Contractor certifies that to the best of their knowledge, information and belief the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for work for which previous payment estimates were issued and payments received from the owner, and that current payment shown herein is now due.				ARCHITECT OR ENGINEER'S CERTIFICATION: The undersigned certifies that the work has been carefully inspected and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.	
Contractor _____ By _____ Date _____				Architect or Engineer _____ By _____ Date _____	
APPROVED BY OWNER: Owner _____ By _____ Date _____				ACCEPTED BY AGENCY: The review and acceptance of this estimate does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the contract documents. By _____ Title _____ Date _____	

According to the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0042. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

RD 1924-18 (Rev. 6-97)

GENERAL CONDITIONS

- | | |
|--|---|
| 1. Definitions | 16. Correction of Work |
| 2. Additional Instructions & Detail Drawings | 17. Subsurface Conditions |
| 3. Schedules, Reports and Records | 18. Suspension of Work, Termination & Delay |
| 4. Drawings and Specifications | 19. Payments to Contractor |
| 5. Shop Drawings | 20. Acceptance of Final Payment as Release |
| 6. Materials, Services and Facilities | 21. Insurance |
| 7. Inspection and Testing | 22. Contract Security |
| 8. Substitutions | 23. Assignments |
| 9. Patents | 24. Indemnification |
| 10. Surveys, Permits, Regulations | 25. Separate Contracts |
| 11. Protection of Work, Property, Persons | 26. Subcontracting |
| 12. Supervision by Contractor | 27. Engineer's Authority |
| 13. Changes in the Work | 28. Land and Rights-of-Way |
| 14. Changes in Contract Price | 29. Guaranty |
| 15. Time for Completion & Liquidated Damages | 30. Taxes |

1. DEFINITIONS

- 1.1. Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:
- 1.2. ADDENDA - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.
- 1.3. BID - The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.
- 1.4. BIDDER - Any person, firm or corporation submitting a BID for the WORK.
- 1.5. BONDS - Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.
- 1.6. CHANGE ORDER - A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.
- 1.7. CONTRACT DOCUMENTS - The contract, including Advertisement For Bids, Information For Bidders, BID, Bid Bond, Agreement, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.
- 1.8. CONTRACT PRICE - The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- 1.9. CONTRACT TIME - The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- 1.10. CONTRACTOR - The person, firm or corporation with whom the OWNER has executed the Agreement.
- 1.11. DRAWINGS - The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.
- 1.12. ENGINEER - The person, firm or corporation named as such in the CONTRACT DOCUMENTS.
- 1.13. FIELD ORDER - A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.
- 1.14. NOTICE OF AWARD - The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.
- 1.15. NOTICE TO PROCEED - Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.
- 1.16. OWNER - A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

- 1.17. **PROJECT** - The undertaking to be performed as provided in the **CONTRACT DOCUMENTS**.
- 1.18. **RESIDENT PROJECT REPRESENTATIVE** - The authorized representative of the **OWNER** who is assigned to the **PROJECT** site or any part thereof.
- 1.19. **SHOP DRAWINGS** - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the **CONTRACTOR**, a **SUBCONTRACTOR**, manufacturer, **SUPPLIER** or distributor, which illustrate how specific portions of the **WORK** shall be fabricated or installed.
- 1.20. **SPECIFICATIONS** - A part of the **CONTRACT DOCUMENTS** consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- 1.21. **SUBCONTRACTOR** - An individual, firm or corporation having a direct contract with the **CONTRACTOR** or with any other **SUBCONTRACTOR** for the performance of a part of the **WORK** at the site.
- 1.22. **SUBSTANTIAL COMPLETION** - That date as certified by the **ENGINEER** when the construction of the **PROJECT** or a specified part thereof is sufficiently completed, in accordance with the **CONTRACT DOCUMENTS**, so that the **PROJECT** or specified part can be utilized for the purposes for which it is intended.
- 1.23. **SUPPLEMENTAL GENERAL CONDITIONS** - Modifications to General Conditions required by a Federal agency for participation in the **PROJECT** and approved by the agency in writing prior to inclusion in the **CONTRACT DOCUMENTS**, or such requirements that may be imposed by applicable state laws.
- 1.24. **SUPPLIER** - Any person or organization who supplies materials or equipment for the **WORK**, including that fabricated to a special design, but who does not perform labor at the site.
- 1.25. **WORK** - All labor necessary to produce the construction required by the **CONTRACT DOCUMENTS**, and all materials and equipment incorporated or to be incorporated in the **PROJECT**.
- 1.26. **WRITTEN NOTICE** - Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the **WORK**.
2. **ADDITIONAL INSTRUCTION AND DETAIL DRAWINGS**
- 2.1. The **CONTRACTOR** may be furnished additional instructions and detail drawings, by the **ENGINEER**, as necessary to carry out the **WORK** required by the **CONTRACT DOCUMENTS**.
- 2.2. The additional drawings and instruction thus supplied will become a part of the **CONTRACT DOCUMENTS**. The **CONTRACTOR** shall carry out the **WORK** in accordance with the additional detail drawings and instructions.
3. **SCHEDULES, REPORTS AND RECORDS**
- 3.1. The **CONTRACTOR** shall submit to the **OWNER** such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the **CONTRACT DOCUMENTS** for the **WORK** to be performed.
- 3.2. Prior to the first partial payment estimate the **CONTRACTOR** shall submit construction progress schedules showing the order in which he proposes to carry on the **WORK**, including dates at which he will start the various parts of the **WORK**, estimated date of completion of each part and, as applicable:
- 3.2.1. The dates at which special detail drawings will be required; and
- 3.2.2. Respective dates for submission of **SHOP DRAWINGS**, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.
- 3.3. The **CONTRACTOR** shall also submit a schedule of payments that he anticipates he will earn during the course of the **WORK**.
4. **DRAWINGS AND SPECIFICATIONS**
- 4.1. The intent of the **DRAWINGS** and **SPECIFICATIONS** is that the **CONTRACTOR** shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the **WORK** in accordance with the **CONTRACT DOCUMENTS** and all incidental work necessary to complete the **PROJECT** in an acceptable manner, ready for use, occupancy or operation by the **OWNER**.
- 4.2. In case of conflict between the **DRAWINGS** and **SPECIFICATIONS**, the **SPECIFICATIONS** shall govern. Figure dimensions on **DRAWINGS** shall govern over scale dimensions, and detailed **DRAWINGS** shall govern over general **DRAWINGS**.
- 4.3. Any discrepancies found between the **DRAWINGS** and **SPECIFICATIONS** and site conditions or and inconsistencies or ambiguities in the **DRAWINGS** or **SPECIFICATIONS** shall be immediately reported to the **ENGINEER**, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. **WORK** done by the **CONTRACTOR** after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the **CONTRACTOR**'s risk.
5. **SHOP DRAWINGS**
- 5.1. The **CONTRACTOR** shall provide **SHOP DRAWINGS** as may be necessary for the prosecution of the **WORK** as required

by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING, which substantially deviates from the requirement of the CONTRACT DOCUMENTS, shall be evidenced by a CHANGE ORDER.

- 5.2. When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- 5.3. Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

6. MATERIALS, SERVICES AND FACILITIES

- 6.1. It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.
- 6.2. Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.
- 6.3. Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4. Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.
- 6.5. Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. INSPECTION AND TESTING

- 7.1. All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.
- 7.2. The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.
- 7.3. The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.
- 7.4. If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.
- 7.5. Inspections, tests or approvals by the engineer or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.
- 7.6. The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.
- 7.7. If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and replaced at the CONTRACTOR'S expense.
- 7.8. If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in questions, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. SUBSTITUTIONS

- 8.1. Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalog number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design

of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. PATENTS

- 9.1. The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however, if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

10. SURVEYS, PERMITS, REGULATIONS

- 10.1. The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.
- 10.2. The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.
- 10.3. Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.
- 10.4. The OWNER will obtain the CONSTRUCTION GENERAL PERMIT from the Vermont Agency of Natural Resources.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

- 11.1. The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 11.2. The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.
- 11.3. In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering such changes and deviations involved.

12. SUPERVISION BY CONTRACTOR

- 12.1. The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. CHANGES IN THE WORK

- 13.1. The OWNER may at any time, as the need arises, order changes within the scope of the WORK with the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.
- 13.2. The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. CHANGES IN CONTRACT PRICE

14.1. The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

14.1.1. Unit prices previously approved.

14.1.2. An agreed lump sum.

14.1.3. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the WORK. In addition, there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead and profit (OHP) if the prime CONTRACTOR performs the work, and not to exceed five (5) percent additional markup by the prime CONTRACTOR if the work is done by a SUB-CONTRACTOR, who is allowed an amount to be agreed upon but not to exceed fifteen (15) percent OHP for the work.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1. The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2. The CONTRACTOR will proceed with the WORK at such rate of progress to insure final completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3. If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the contractor will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4. The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1. To any preference, priority or allocation order duly issued by the OWNER;

15.4.2. To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a CONTRACT with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

15.4.3. To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1. and 15.4.2 of this article.

16. CORRECTION OF WORK

16.1. The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2. All removal and replacement WORK shall be done at the CONTRACTOR's expense. If the CONTRACTOR does not take action to remove such rejected work within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. SUBSURFACE CONDITIONS

17.1. The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1. Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

17.1.2. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2. The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

18.1. The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume the WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2. If the CONTRACTOR is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his

creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT price exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

- 18.3. Where the CONTRACTOR's services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- 18.4. After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.
- 18.5. If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted, or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of this approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days WRITTEN NOTICE to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.
- 18.6. If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. PAYMENTS TO CONTRACTOR

- 19.1. At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER's title to the material and equipment and protect his interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of the presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all WORK covered by the CONTRACT DOCUMENTS. The OWNER at any time, however, after fifty (50) percent of the WORK has been completed, if he finds that satisfactory progress is being made, shall reduce Retainage to five (5) percent on the current and remaining estimates. When the WORK is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.
- 19.2. The request for payment may also include an allowance for the cost of such major materials and equipment, which are suitably stored either at or near the site.
- 19.3. Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.
- 19.4. The OWNER shall have the right to enter the premises for the purpose of doing WORK not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.
- 19.5. Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire

balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.

19.6. The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, material-men, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.7. If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1. The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND or Payment BONDS.

21. INSURANCE

21.1. The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1. Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

21.1.2. Claims for damages because of bodily injury, occupational sickness or disease, or death or his employees;

21.1.3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.4. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.

21.2. Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER

21.3. INSURANCE REQUIREMENTS. Insurance obtained by the CONTRACTOR to cover the below-listed requirements shall be procured from an insurance company registered and licensed to do business in the State of Vermont. All insurance coverage for property damage shall provide coverage for "Replacement" cost. Before the CONTRACT is signed and becomes effective, the CONTRACTOR shall file with the OWNER a certificate of insurance, in duplicate, executed by an insurance company or its licensed agent(s), on a form satisfactory to the OWNER, stating that with respect to the CONTRACT awarded, the CONTRACTOR carries insurance in accordance with the following requirements. Renewal certificates for keeping the required insurance in force for the duration of the CONTRACT shall also be filed as specified above. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the CONTRACTOR and any SUBCONTRACTOR for the CONTRACTOR'S and any SUBCONTRACTOR'S operations. These are solely minimums that have been established to protect the interests of the OWNER. The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, insurances as hereinafter specified:

21.3.1. Workers Compensation Insurance. With respect to all operations performed the CONTRACTOR shall carry Workers Compensation Insurance in accordance with the laws of the State of Vermont, 21 V.S.A. Chapter 9. The CONTRACTOR shall also ensure that all SUBCONTRACTORS carry Workers Compensation Insurance in accordance with 21 V.S.A. Chapter 9 for all work performed by them.

21.3.2. Commercial General Liability Insurance. With respect to all operations performed by the CONTRACTOR and SUBCONTRACTORS, the CONTRACTOR shall carry Commercial General Liability Insurance on an occurrence form providing all major divisions of coverage, including but not limited to:

21.3.2.1. Premises – Operations

21.3.2.2. Independent Contractor's Protective

21.3.2.3. Products and Completed Operations

21.3.2.4. Personal Injury Liability

21.3.2.5. Contractor's General Liability and Property Damage Insurance will be obtained by the CONTRACTOR protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Contractual Liability applying to the CONTRACTOR'S obligations, unless this requirement is waived in writing by the OWNER, shall have Limits of Coverage not less than:

21.3.2.5.1. \$1,500,000 Each Occurrence

21.3.2.5.2. \$2,000,000 General Aggregate applying, in total to this project only

21.3.2.5.3. \$2,000,000 Products/Completed Operations Aggregate

21.3.2.5.4. \$ 250,000 Fire Damage Legal Liability

21.3.3. Automobile Liability Insurance. The CONTRACTOR shall carry Automobile Liability Insurance covering all motor vehicles, including owned, hired, borrowed, and non-owned vehicles, used in connection with the project. Limits of Coverage shall be not less than:

21.3.3.1. Bodily Injury: \$1,000,000 Each Person, \$1,000,000 Each Occurrence

21.3.3.2. Property Damage: \$ 500,000 Each Occurrence, OR

21.3.3.3. Combined Single Limit: \$1,500,000 Each Occurrence

21.3.4. Railroad Protective Liability Insurance. When the CONTRACT involves work on, over or under the right-of-way of any railroad, the CONTRACTOR shall carry, with respect to operations performed by the CONTRACTOR and/or by the CONTRACTOR'S SUBCONTRACTORS, Railroad Protective Liability Insurance in a form and amount as required by the railroad company and as specified in the Special Conditions and/or Supplemental Specifications for the project. If not available from insurance companies registered and licensed to do business in the State of Vermont, this insurance may be procured from Eligible Surplus Lines Companies approved by the Vermont Department of Banking, Insurance, Securities, & Health Care Administration (BISHCA). The CONTRACTOR shall file the original Railroad Protective Policy and one duplicate policy with the OWNER. The OWNER will transmit the original Railroad Protective Policy to the railroad concerned. The CONTRACTOR shall cooperate with and allow the railroad company or its agents free and full access to the project during construction along with all materials and equipment necessary in order that their duly authorized employees or agents may do any and all railroad construction, inspection, flagging and watching. The CONTRACTOR shall defend, indemnify, and save harmless the railroad and all of its officers, employees, and agents against any claim or liability arising from or based on any delay to the CONTRACTOR as a result of railroad construction or maintenance, whether by the railroad company, its employees, or agents.

21.3.5. General Insurance Conditions. The insurance specified under paragraphs 21.3.1, 21.3.2, and 21.3.3 above shall be maintained in force until acceptance of the project by the OWNER. Under paragraph 21.3.2 above, Products and Completed Operations Coverage shall be maintained in force for at least one year from the date of acceptance of the project. Under paragraph 21.3.4 above, the Railroad Protective Policy shall remain in force until all work required to be performed on railroad property is completed to the satisfaction of the Railroad and the OWNER. The contractual liability insurance requirements detailed in the Contract Documents are to indemnify, defend, and hold harmless the OWNER, and railroad(s), as applicable, and their officers, agents, representatives, and employees, with respect to any and all claims, causes of actions, losses, expenses, or damages that arise out of, relate to, or are in any manner connected with the CONTRACTOR'S work or the supervision of the CONTRACTOR'S work on this project. Each policy, except the Workers Compensation Policy, shall name the OWNER, and railroad(s), as additional insureds for actions, losses, expenses or damages that arise out of, relate to, or are in any manner connected with the CONTRACTOR'S work or the supervision of the CONTRACTOR'S work on this project. Umbrella Excess Liability Policies may be used in conjunction with primary policies to comply with any of the limit requirements specified above. "Claims-made" coverage forms are not acceptable without the prior written consent of the OWNER. The CONTRACTOR shall investigate and the CONTRACTOR and/or insurance company shall either adjust or defend all claims against the insured for damages covered, even if groundless. Each policy furnished shall contain a rider or non-cancellation clause reading in substance as follows: Anything herein to the contrary notwithstanding, no cancellation, termination, or alteration of this policy by the company or the assured shall become effective unless and until notice of cancellation, termination, or alteration has been given by registered mail to the OWNER, at least 30 calendar days before the effective cancellation, termination, or alteration date unless all work required to be performed under the terms of the CONTRACT is satisfactorily completed as evidenced by the formal, final acceptance of the project by the OWNER. There shall be no directed compensation allowed the CONTRACTOR on account of any premium or other charge necessary to take out and keep in effect such insurance or bond; the cost thereof shall be considered included in the general cost of the work.

21.3.6. The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4. The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, in accordance with the provision of the laws of the state in which the WORK is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any WORK is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous WORK under this CONTRACT at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and

shall cause, each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

- 21.5. The CONTRACTOR shall secure "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, water and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

22. CONTRACT SECURITY

- 22.1. The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance BOND and a Payment BOND in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. ASSIGNMENTS

- 23.1. Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of his right, title or interest therein, or his obligations hereunder, without written consent of the other party.

24. INDEMNIFICATION

- 24.1. The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting there from; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
- 24.2. In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.
- 24.3. The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, design or SPECIFICATIONS.

25. SEPARATE CONTRACTS

- 25.1. The OWNER reserves the right to let other CONTRACTS in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.
- 25.2. The OWNER may perform additional WORK related to the PROJECT by himself or he may let other CONTRACTS containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such CONTRACTS (for the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.
- 25.3. If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, WRITTEN NOTICE thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefore as provided in Section 14 and 15.

26. SUBCONTRACTING

- 26.1. The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which under normal contracting practices, are performed by specialty SUBCONTRACTORS.
- 26.2. The CONTRACTOR shall not award WORK to SUBCONTRACTOR(S), in excess of fifty (50) percent of the CONTRACT PRICE, without prior written approval of the OWNER.

- 26.3. The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons wither directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- 26.4. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.
- 26.5. Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.
27. ENGINEER'S AUTHORITY
- 27.1. The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.
- 27.2. The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.
- 27.3. The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.
- 27.4. The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.
28. LAND AND RIGHTS-OF-WAY
- 28.1. Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.
- 28.2. The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.
- 28.3. The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.
29. GUARANTY
- 29.1. The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one, (1) year from the date of SUBSTANTIAL COMPLETION or FINAL COMPLETION OF THE PROJECT or specified part, as appropriate. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION or FINAL COMPLETION OF THE PROJECT or specified part, as appropriate, that the completed project is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the project resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.
30. TAXES
- 30.1. The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

**CONSTRUCTION of a DISTRICT HEATING SYSTEM, HOT WATER CONVERSION AND CONNECTIONS
CITY of MONTPELIER, VERMONT**

SCOPE OF WORK/MEASUREMENT & PAYMENT

Work to be performed under this contract consists of the construction of a thin wall, carbon steel, pre-insulated district heating piping system, ranging from 8" diameter to 1.5" in both system mains and service laterals. This new piping system will run between the State of Vermont's heating plant, through City streets and extend to Union Elementary School and City Hall, with service laterals and spurs branching off to serve non-City customers. The work includes restoration of the surface conditions after pipe installation. In addition, this project includes converting the Union Elementary from a low pressure steam heating system to a hot water heating system. Finally, this project includes connecting and converting the Police Department and the City Hall buildings to the district heating system and modifying their internal heating systems to use the district hot water.

All areas of work, and work site descriptions with bid item quantities are outlined on a spreadsheet attached herewith.

Construction will be carried out in accordance with the plans entitled CONSTRUCTION of a DISTRICT HEATING SYSTEM, HOT WATER CONVERSION AND CONNECTIONS prepared by Hallam-ICS, DeWolfe Engineering and Ever-Green Energy and the Project Specifications and as directed and/or as described herein. The standard typical design and construction details referenced for this contract are identified as follows and are attached hereto:

VAOT (VTrans) Standard Detail C-2b, C-3, C-3a and C-3-b;

VAOT (VTrans) Standard Detail D20;

VAOT (VTrans) Standard Detail E-100, E-100A;
Work Zones Traffic Control).

Manual of Uniform Traffic Control Devices (Pedestrian

General

For unit price items, the Contractor shall be paid for the actual amount of work measured and accepted by the City.

- A. For Lump Sum items, the Contractor shall be required to submit a schedule of values breaking out the value for each portion of the work required under the item. The schedule of values will need to be reviewed and approved by the City prior to the start of construction. Lump sum items will be paid for the percentage of the item that has been completed as described in the schedule of values.
- B. At the end of each work day, the Contractor's representative shall review the quantities measured by the Engineer/City representative to ensure agreement.
- C. The payment period shall be on a monthly basis. At the end of each month, the Contractor shall be required to submit a payment request for the work completed within the payment period. The City will consider bi-weekly payment periods on a case by case basis.

A 10% contract retainage will be held on the work completed, until the contractor has completed 50% of the total amount of work on the contract. Once the Contractor has reached 50% completion, the retainage may be reduced to 5%. The City reserves the right to maintain a 10% contract retainage for the duration of the project as circumstances warrant.

Bid Item 1 – In-Ground 3"/7" Hot Water Piping Installation – City-Owned Main

Description:

This item consists of all work necessary to install hot water piping below grade for the portion of the pipe that is the City-owned main. All labor, materials and equipment necessary to complete the following items are to be included in the bid item:

- Excavate , bed, backfill trench

Hallen/CS	Montpelier District Heating City of Montpelier, VT	Issue Date: September 28, 2012	
Title: 01330 – Project Schedule			Page #: 1 of 3

REVISION HISTORY		
Rev	Description of Change	Description of Change
0	Initial Release	
A	For Bidding	September 28, 2012
B	Addendum 2	October 17, 2012

SECTION 01330 - PROJECT SCHEDULE

PART 1 GENERAL

1.1 DEVELOPMENT OF THE PROJECT SCHEDULE

- A. The OWNER's Representative will schedule the Project Schedule Definition Meeting with the OWNER, the ENGINEER and the CONTRACTOR and CONTRACTOR's key sub-contractors. The meeting will include presentation of the detailed Preliminary Project Schedule previously summarized in the bidding documents. The discussions and mutual agreements reached at this meeting will form the basis for developing the baseline schedule be used for coordinating, scheduling, and monitoring the Work of all related contracts.
- B. Changes proposed by the CONTRACTORS which may alter the baseline schedule shall include identification of activities and tasks including activity, activity descriptions, specification section numbers related to each activity, durations, and other information required to modify the schedule.
- C. The OWNER's Representative will complete the Project Schedule and present it to the CONTRACTORS for review and acceptance.
- D. Any Contractor who fails to furnish information required for completion of the Project Schedule, or who fails to accept the defined Project Schedule by signing the Agreement form within 10 days of final schedule presentation, will be required to provide all resources necessary to execute the Project Schedule as developed and defined by the OWNER's Representative.

1.2 UPDATING THE PROJECT SCHEDULE

- A. The project meetings will be used for presenting the updated Project Schedule and determining the status of construction activities. At each meeting the OWNER's Representative will furnish to the Contractors schedule status reports to be used for indicating the anticipated completion date of current activities, analyzing the

Hallam/ICS	Montpelier District Heating City of Montpelier, VT	Issue Date: September 28, 2012	
Title: 01330 – Project Schedule	Page #: 2 of 3		

progress of construction, and identifying the Contractor or Contractors who are not progressing their Work as scheduled.

- B. Furnish all schedule information requested by the OWNER's Representative. Any CONTRACTOR who fails to furnish this information within the specified time period will be required to provide all resources necessary to execute the Project Schedule developed by the OWNER's Representative.

1.3 MAINTAINING SCHEDULE

- A. Perform the Work in accordance with the Project Schedule and provide resources necessary to maintain the progress of activities as scheduled so that no delays are caused to other CONTRACTORS engaged in the Work.
- B. Should any CONTRACTOR fail to maintain progress according to schedule or cause delay to another CONTRACTOR, that CONTRACTOR shall provide such additional manpower, equipment, additional shifts, or other measures as directed to bring the operations back on schedule.

1.4 SCHEDULE RELATED REPORTING

- A. Application For Payment: Prepare forms and support documentation in a manner compatible with the Bid Tabulations. Show costs in support of activities progressed in the Project Schedule status updates. Percentage completion amounts must reflect accepted work in place as agreed upon by the OWNER's Representative and documented in project meeting schedule status reports.

PART 2 PRODUCTS (Not Used)

PART 3 EXECUTION (Not Used)

3.1 ORDINARY WORKING HOURS:

- A. See Miscellaneous and Special Provisions in the General Conditions

3.2 WATER SYSTEM WORK - GENERAL

- A. Contractor shall perform domestic water improvements in any area before installing district heating piping in those areas.

3.3 WATER SYSTEM WORK - SPECIAL

Hallam/ICS	Montpelier District Heating City of Montpelier, VT	Issue Date: September 28, 2012	
Title: 01330 – Project Schedule			Page #: 3 of 3

- A. Contractor shall perform shutdowns supporting domestic water system work on State Street between midnight and 6:00 AM, in close coordination with the Owner's Representative and the Owners of affected properties.

3.4 SPECIFIC DATES

- A. Beneficial Use: September 30, 2012
- B. Substantial Completion: October 31, 2012

3.5 UNION ELEMENTARY SCHOOL

- A. Contractor can perform no work in the school during the academic year.
 - 1. School End: June 19, 2013
 - 2. School Start: August 28, 2013

3.6 COMMUNITY EVENTS

- A. During specified Community Events, Contractor and Owner's Representative shall make provisions for the streets to be temporarily covered and all areas of the site clear.
- B. Certain events are scheduled herein, the Contractor, Owner and Owner's Representative will work together throughout the pre-construction and construction period to schedule the work around Community Events.
- C. The Montpelier Alive website is a valuable resource for understanding the dates, times and locations of Community Events.
- D. Currently Known Community Events:
 - 1. Independence Day Celebration: July 03, 2012
 - 2. Corporate Cup: May 16, 2012

END OF SECTION 01330

Hallam/ICS	Montpelier District Heating City of Montpelier, VT	Issue Date: September 28, 2012	
Title: 01340 – Submittals			Page #: 1 of 12

REVISION HISTORY		
Rev	Description of Change	Date
A	For Bidding	September 28, 2012
B	Addendum 2	October 17, 2012

SECTION 013300 - SUBMITTALS

PART 1 GENERAL

1.1 RELATED REQUIREMENTS SPECIFIED ELSEWHERE

- A. Other requirements pertaining to submittals are included in the General Conditions and in the various sections of the Specifications.

1.2 DEFINITIONS

- A. Deviation: Changes in products, materials, equipment and methods of construction from those required by the Contract Documents and proposed by the Contractor.

1.3 DEVIATIONS FROM REQUIREMENTS OF THE CONTRACT DOCUMENTS

- A. Deviations from the requirements of the Contract Documents will not be allowed unless a request for deviation is made in writing prior to or at the time of submission and the specific deviation is approved by the ^ Owner's Representative subject to the requirements ^ the General Conditions. The request for deviation shall be made in writing, via the Submittals website.^
 - 1. The submission of a deviation shall be done in a timely manner according to the schedule of submittals to allow the ^ Owner sufficient time for review.

1.4 "OR EQUAL" TO BRAND NAME PRODUCTS

- A. Whenever a product is specified by brand name, a comparable brand, equal to that named, may be submitted for approval subject to the requirements of Article 5 of the General Conditions.
 - 1. The contractor shall bear the burden of proving that the proposed product

Sandy Pitonyak

From: William Fraser
Sent: Wednesday, December 04, 2013 3:43 PM
To: L-Council
Cc: dharm@comcast.net; cindra@thequirkypet.com
Subject: Kingsbury request for extension
Attachments: Kingsbury Request to City 08 30 13.pdf

This document was requested yesterday. This is Kingsbury's August 30th request to the city for additional time to complete the project. You have already received the city's response to them.

If I haven't already mentioned this, representatives from Kingsbury will be at the meeting tonight and are prepared to answer questions.

William J. Fraser, ICMA-CM
City Manager
City of Montpelier
39 Main Street
Montpelier, Vermont 05602
Phone: (802) 223-9502
Fax: (802) 223-9519
www.montpelier-vt.org
http://icma.org/en/icma/about/anniversary/life_well_run

Notice - Under Vermont's Open Records law, all e-mail and e-mail attachments received or prepared for use in matters concerning City business or containing information relating to City business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law. If you have received this message in error, please notify us immediately by return email. Thank you for your cooperation.

August 30, 2013

Mr. Todd C. Law, P. E.
Public Works Director
City of Montpelier, Vermont
City Hall, 39 Main Street
Montpelier, Vermont 05602

Re: Montpelier District Heating Project - Montpelier, Vermont

Request for time extension due to unforeseen conditions.

Dear Todd:

A number of delays have accumulated that are now causing some serious concerns with regard to substantial completion. The most recent is the re-design and postponement of the work behind the Chittenden Bank on Taylor Street. Weeks were spent planning this work and waiting for design information and easements. On the Friday before the weekend work, it was discovered that the new pipe conflicts with existing duct banks and the work planned had to be scrapped to allow for redesign. We lost a week waiting for the redesign and could not work a weekend over the Labor Day holiday. We have rescheduled the work for September 7. We will still need the final design at the plant before we get going, so please be sure the designer's stay on top of this. We were able to cancel the crew for Saturday and they have been able to stay busy this week cleaning up loose ends so, in this instance, it is a time delay only.

This delay builds on a number of others experienced this summer. I don't think I need to mention to you that at the end of May and during the entire month of June and July we experienced unusually rainy weather, even for Vermont. It has been a popular subject for everyone and we are all thankful that finally the rainy trend is behind us. During the month of June alone, Montpelier received 8.35" of rain when we normally receive 3.80". The impact of this was compounded by the fact that the precipitation was not received in a few big storms but over 20 days during that month alone. As you know, the pipe and insulation that we are installing is particularly sensitive to soggy weather and we have spent nearly as much time protecting the pipe as we have installing it.



INTEGRITY • ADAPTABILITY • EFFICIENCY

We also lost considerable time and suffered significant additional costs at School Street and the corner of Taylor and State as a result of unforeseen conditions and the resultant redesign time. We prepared a change order for this work but Kurt and I agreed to table this extra work pending the outcome of an expanded exploratory excavation program to avoid crew downtime during such delays. This program was marginally effective at the corner of State and Elm and, as stated above, was effective at eliminating unnecessary crew costs behind the Bank. I only bring this up in this letter only because we are closing in on completion and there are fewer places to keep crews busy while redesign takes place. Hopefully the exploratory excavation program will be equally effective on Main Street.

As far as the Taylor Street delay and loss of productivity due to weather, I formally request 14 days and 10 days respectively for lost time beyond the control of Kingsbury Companies, LLC. As stated in our meeting yesterday, we have added another crew effective Tuesday and will make every reasonable effort to make the current completion date. Based on our mutual history of finding things in the street that require redesign, it is just not possible to guarantee it.

This has been a very challenging project and I think the entire team has risen to the challenge. We will continue to work with you to make the best of the unforeseen obstacles that seem to come our way every week. There is light at the end of the tunnel and everyone deserves credit for getting us this close. Let's keep on pushing.

Respectfully,

Dean Zoecklein
Operations Manager

Sandy Pitonyak

From: William Fraser
Sent: Wednesday, December 04, 2013 10:02 AM
To: L-Council
Cc: Lyn Munno (lyn.munno@gmail.com)
Subject: FW: Dog Waste Ordinance
Attachments: Dog Waste Ordinances.docx

Hello All

This item is on tonight's agenda. I meant to spend more time on it but just didn't.

If you are inclined to change the ordinance, my suggestion would be to replace the language in (a) and keep the language in (b), (c) and (d).

Montpelier's Current Dog Waste Ordinance:

ec. 8-210. DEFECACTION.

(a) The person in control of any dog which defecates in a public park, walkway, sidewalk, street, public way, playground, cemetery, school grounds, state property or on private property shall remove such material immediately and dispose of it in a sanitary manner. This provision shall not apply to private property used without objection of the property owner or to off-trail, wooded areas of public parks.

(b) It shall be unlawful for the owner of any dog to violate subsection (a) herein

(c) A violation of this Section shall be subject to the general penalty provisions, and those penalty provisions of Section 8-205 herein. Additionally, and in lieu thereof, the City of Montpelier may elect to issue a City nuisance citation in connection with initial and subsequent offenses of this provision. In that event, a civil penalty of \$30 may be imposed for the initial violation. The penalty for a second offense within a six-month period of the initial offense shall be \$50. The penalty for a third and any subsequent offense within a six month period shall be \$60.

(d) Any person who fails or declines to respond to a City nuisance citation issued pursuant to subsection (c) herein shall be subject to the general penalty provisions and the provisions of Sec. 8-205 herein in respect of the original offense

Lyn Munno's suggested replacement language for (a) is:

The person in control of a domestic pet which defecates in any public area or on private property of another person shall immediately remove the fecal material and dispose of it in a sanitary manner.

Bill

William J. Fraser, ICMA-CM
City Manager
City of Montpelier
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www.montpelier-vt.org
http://icma.org/en/icma/about/anniversary/life_well_run

From: Lyn Munno [<mailto:lyn.munno@gmail.com>]

Sent: Sunday, November 03, 2013 8:39 PM

To: William Fraser

Subject: Dog Waste Ordinance

Hi Bill,

Thanks for your help drafting the dog waste ordinance. Again our goal is to have the ordinance as simple as possible and to have it convey to folks that they need to pick up after their dogs in Montpelier regardless of where they are. I am attaching a list of a few dog waste ordinance in Vermont. I would propose that we go with the language of the warren ordinance except that we change the words 'domestic pet' and insert the word 'dog' since this is a dog waste ordinance.

The person in control of a dog which defecates in any public area or on private property of another person shall immediately remove the fecal material and dispose of it in a sanitary manner.

Let me know what you think and if you like any of the ordinances better or think we should change any of the language or clarify further.

Also, do we just insert the language in section a and leave the rest of the ordinance the same?

Thanks for all your support on this.

Best wishes,

Lyn Munno

Montpelier's Current Dog Waste Ordinance:

ec. 8-210. DEFECATION.

(a) The person in control of any dog which defecates in a public park, walkway, sidewalk, street, public way, playground, cemetery, school grounds, state property or on private property shall remove such material immediately and dispose of it in a sanitary manner. This provision shall not apply to private property used without objection of the property owner or to off-trail, wooded areas of public parks.

(b) It shall be unlawful for the owner of any dog to violate subsection (a) herein

(c) A violation of this Section shall be subject to the general penalty provisions, and those penalty provisions of Section 8-205 herein. Additionally, and in lieu thereof, the City of Montpelier may elect to issue a City nuisance citation in connection with initial and subsequent offenses of this provision. In that event, a civil penalty of \$30 may be imposed for the initial violation. The penalty for a second offense within a six-month period of the initial offense shall be \$50. The penalty for a third and any subsequent offense within a six month period shall be \$60.

(d) Any person who fails or declines to respond to a City nuisance citation issued pursuant to subsection (c) herein shall be subject to the general penalty provisions and the provisions of Sec. 8-205 herein in respect of the original offense.

Warren

SECTION 5. DEFECATION.

The person in control of a domestic pet which defecates in any public area or on private property of another person shall immediately remove the fecal material and dispose of it in a sanitary manner.

St. Albans

SECTION 5. POOPER SCOOPER. The person in control of a dog [or wolf hybrid] which defecates in any public area or on the private property of another person shall immediately remove the fecal material and dispose of it in a sanitary manner.

Burlington

5-17 Removal of dog waste required.

The owner, keeper or person in control of any dog shall be responsible for the removal of any defecation deposited by such dog on any public or private property.

Brattleboro

Removal from Public Property

Any owner or person having custody of any dog or wolf-hybrid shall not permit said animal on any public grounds including public streets, alleys, sidewalks, parks, cemeteries, or any other public grounds within the Town of Brattleboro unless said owner or person in control has in his or her possession a mechanical or other device for the removal of excrement; nor shall said owner or person in control fail to expeditiously remove any such excrement deposited by said dog or wolf-hybrid in any such place. For the purpose of this Section, the reference to mechanical or other device shall include, without limitation, a pooper scooper, a trowel, a shovel, a plastic bag or other appropriate container.

Williston

A) A dog owner have in his/her possession whenever his/her dog is off owner's premises, some form of bag or waste scooping device to be used for scooping up solid waste excrement deposited by such dog. Any dog owner walking his/her dog off premises without some form of bag or waste scooping device is in violation of this ordinance.

B) The owner of every dog shall be responsible for the removal and proper disposal of any solid waste excrement deposited by his or her animal(s) on public walks, recreation areas or public or private property (not owned or possessed by that person). If any excrement is not promptly removed or properly disposed of, then the owner of said dog shall be deemed in violation of this ordinance.

C) Proper disposal consists of placing the excrement in a designated waste receptacle or other suitable container and discarded in a refuse container which is regularly emptied by the municipality or some other refuse collector or disposal into a system designated to convey domestic sewage for proper treatment and disposal or buried more than six inches below the surface of the ground.

Barre

Sec 3-7 Nuisance animals

No Owner, keeper or other person having control shall permit an animal to be a nuisance animal. For the purpose of this section, nuisance animal means any animal or animals which:

4. Defecates off the premises of the animal's owner and the owner, or other individual in control of the animal, fails to remove such deposits immediately.

Sandy Pitonyak

From: William Fraser
Sent: Thursday, November 21, 2013 12:32 PM
To: L-Council
Subject: Solar Exemption

To follow up on last night's conversation, here is the statute dealing with tax exemption for solar panels, etc. It is clear that this needs to be voted on by the public. The Council is able to add this item to the ballot if you wish.

The Vermont Statutes Online

Title 32: Taxation and Finance

Chapter 125: EXEMPTIONS

Sub-Chapter 002: Restricted Exemptions

32 V.S.A. § 3845. Alternate energy sources

§ 3845. Alternate energy sources

(a) At an annual or special meeting warned for that purpose, a town may, by a majority vote of those present and voting, exempt alternate energy sources, as defined herein, from real and personal property taxation. Such exemption shall first be applicable against the grand list of the year in which the vote is taken and shall continue until voted otherwise, in the same manner, by the town.

(b) For the purposes of this section alternate energy sources includes any plant, structure or facility used for the generation of electricity or production of energy used on the premises for private, domestic, or agricultural purposes, no part of which may be for sale or exchange to the public. The term shall include, but not be limited to grist mills, windmills, facilities for the collection of solar energy or the conversion of organic matter to methane, net metering systems regulated by the public service board under 30 V.S.A. § 219a, and all component parts thereof including land upon which the facility is located, not to exceed one-half acre. (Added 1975, No. 226 (Adj. Sess.), § 2; amended 2007, No. 92 (Adj. Sess.), § 23.)

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