

AGREEMENT

This Agreement, made this _____ day of _____, 20____, by and between City of Burlington, hereinafter called the "Owner," and _____ doing business as a _____ (an individual, a partnership, or a corporation), hereinafter called the "Contractor."

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

- A. The Contractor agrees to commence and complete the construction described as follows:
Fletcher Free Library Main Entrance & Exterior Repairs, Burlington, Vermont.

- B. The Contractor agrees to furnish all the necessary labor, materials, equipment, tools, and other services of any nature whatsoever necessary to execute, complete, or deliver in a workmanlike manner the improvements to the Fletcher Free Library project as shown on the Drawings and described in the Specifications listed below, in this Agreement, and in the Bid Form attached hereto.

- C. 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 _____ 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.

- D. The Contractor agrees to perform all the Work described in the Contract Documents and comply with the terms therein for the sum of \$ _____ or as shown in the Bid schedule.

- E. The term "Contract Documents" means and includes the following:
 - ADVERTISEMENT FOR BIDS
 - INSTRUCTIONS TO BIDDERS
 - BID FORM
 - BID BOND
 - NOTICE OF AWARD
 - NOTICE TO PROCEED
 - AGREEMENT
 - ACCEPTANCE OF NOTICE
 - CHANGE ORDER
 - PERFORMANCE & PAYMENT BONDS
 - GENERAL CONDITIONS
 - SUPPLEMENTARY CONDITIONS
 - APPLICATION FOR PAYMENT
 - CERTIFICATE OF SUBSTANTIAL COMPLETION
 - CERTIFICATE OF FINAL COMPLETION OF WORK
 - GENERAL SPECIFICATIONS
 - DRAWINGS prepared by Champlain Consulting Engineers, Inc. and Duncan Wisniewski Architecture.

Addenda:

No. _____, dated _____, 20____

No. _____, dated _____, 20____

Disadvantaged Business Enterprise (DBE) Policy Contract Requirements
General Special Provisions for All Projects dated July 6, 2010
Work Zone Safety and Mobility Guidance Document
City of Burlington Prequalification of Construction Contractors Application

All codes and standards applicable to this project.

- F. Fletcher Free Library Main Entrance & Exterior Repairs shall include all of the Work shown on the Drawings, described in the Specifications, and this Agreement.
- G. Work under this Agreement shall be commenced immediately upon the receipt of the Notice to Proceed. The Contractor agrees to complete the work specified in this Agreement. If the contract time is extended due to the negligence of the Contractor, the Contractor shall be held responsible for all associated Architect/Engineer costs, such as resident inspection, testing, etc., incurred as a result of the extension. The Contractor agrees to pay as liquidated damages the amounts as defined in the Bid Form, if so noted.
- H. The Contractor agrees to bind every subcontractor by the terms of the Contract Documents. The Contract Documents shall not be construed as creating a contractual relationship between any subcontractor and the Owner.
- I. All Work shall be done under the general supervision of the Owner. The Owner and the Architect shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, Work performed, rate of progress of Work, interpretation of Drawings and Specifications, and all questions as to the acceptable fulfillment of this Agreement on the part of the Contractor.
- J. This Agreement and all of the covenants hereof shall insure to the benefit of and be binding upon the Owner and the Contractor respectively, their successors, assigns, and legal representatives. Neither the Owner nor the Contractor shall have the right to assign, transfer, or sublet its interest or obligations hereunder without written consent of the other party.
- K. The Owner shall make progress payments monthly to the Contractor on the basis of an approved estimate of the Work performed during the preceding month based upon the Schedule of Values. Payment requests shall be submitted to the Architect. The Architect shall approve or disapprove the payment request within ten (10) calendar days. Payment shall be within twenty (20) days of the payment request approval. All materials and Work covered by partial payments shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made. This provision shall also not be construed as relieving the Contractor for the sole responsibility for the restoration of any damaged Work or as a waiver of the right of the Owner to require fulfillment of all the terms of this Agreement.
- L. The Contractor shall maintain in effect throughout the term of this Agreement comprehensive public liability insurance with an A rated insurance carrier, or better qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Agreement in an amount not less than \$1,000,000 for each occurrence and \$2,000,000 general aggregate. The City of Burlington shall be named as an additional insured on such insurance policy.

Prior to the execution of the Agreement, the Contractor shall furnish the City with a certificate of insurance which shall include the provision that the City is named as an additional insured and shall be given 30 days written notification prior to cancellation of such insurance.

It is the responsibility of Contractor to ensure that a current certificate of insurance is on file with the City at all times. Failure to furnish and maintain a current certificate of insurance on file with the City will result in a hold on all outstanding pay requisitions until such time as the current certificate of insurance is on file.

The chosen contractor shall procure insurance to cover the below-listed requirements from an insurance company registered and licensed to do business in the State of Vermont. Before the construction contract is executed, the Contractor shall file with the Owner a certificate of insurance executed by the insurance company or its licensed agent(s) stating that with respect to the contract awarded, the Contractor carries insurance in accordance with the following requirements:

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. The Contractor shall also ensure that all subcontractors carry Workers Compensation Insurance for all Work performed by them.

2. Contractors' Public Liability and Property Damage Insurance: With respect to all operations performed by the Contractor and subcontractors, the Contractor shall carry Public Liability and Property Damage Insurance providing all major divisions of coverage including, but not limited to:
 - Premises – Operations
 - Independent Contractors' Protective
 - Products and Completed Operations
 - Personal Injury Liability
 - Contractual Liability Applying to the Contractor's Obligations for Damage Claims, Broad Form Property Damage
 - Collapse and Underground (CU) Coverage
 - Explosion (X) Coverage, unless this requirement is waived in writing.
 - a) If the Public Liability Coverages are provided under a Commercial General Liability Policy, coverage shall be provided on an Occurrence form. Limits of Coverage shall be not less than:
 - \$1,000,000 Each Occurrence
 - \$1,000,000 General Aggregate Applying, In Total, To This Project Only
 - \$1,000,000 Products/Completed Operations Aggregate
 - \$ 50,000 Fire Damage

 - b) If the Public Liability Coverages are provided under a Comprehensive General Liability Policy, Limits of Coverage shall be not less than:
 - Bodily Injury: \$500,000 Each Occurrence, \$1,000,000 Aggregate
 - Property Damage: \$1,500,000 Each Occurrence, \$2,000,000 Aggregate
 - or: Combined Single Limit: \$2,000,000 Each Occurrence, \$2,000,000 Aggregate

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:
 - Bodily Injury: \$500,000 Each Person, \$1,000,000 Each Occurrence
 - Property Damage: \$500,000 Each Occurrence
 - or:
 - Combined Single Limit: \$1,500,000 Each Occurrence

4. General Insurance Conditions: The insurance hereinbefore specified under parts 1-3 shall be maintained in force until acceptance of the project by the Owner. Under part 2, Products and Completed Operations Coverage shall be maintained in force for at least one year after the date of acceptance of the project.

Each policy shall name City of Burlington as an additional insured for the possible liabilities resulting from the Contractor's actions or omissions. 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 Insurance Company shall agree to investigate and 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 City of Burlington at least thirty (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 acceptance by City of Burlington.

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, but the cost thereof shall be considered included in the general cost of the Work.

- M. The Contractor will indemnify and save the Owner, the Architect harmless from all claims growing out of the lawful demands of subcontractors, laborers, workers, mechanics, material providers, and furnishers of machinery and parts thereof, equipments, tools, and all supplies incurred in 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.

The Contractor and all Contract Documents between the Contractor and Subcontractors, shall comply with and fully conform to the provisions of Title 9, Chapter 102 "Construction Contracts" Section 4001 et seq. of Vermont Statutes Annotated.

- N. The Contractor agrees to provide and pay for all materials, labor, tools, equipment, water, light, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the Work contained in the Drawings and Specifications within the specified time. Any penalty imposed by the State of Vermont due to excavation, movement, or erosion of the soils on the site during the life of the Agreement shall be the responsibility and expense of the Contractor.

- O. If the Contractor defaults or neglects to carry out the Work in accordance with this Agreement, the Owner may, after forty-eight (48) hours written notice to the Contractor and without prejudice to any other remedy it may have, make good such deficiencies.

The cost thereof shall be deducted from the payment then or thereafter due the Contractor or, at its option, the Owner may terminate this Agreement and take possession of the site and all materials, equipment, tools, construction equipment, and machinery thereon owned by the Contractor and may finish the Work by whatever method it may deem expedient. The Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of this Agreement exceeds the cost of finishing the Work, such excess shall be paid to the Contractor. However, if such expense exceeds the unpaid balance, the Contractor shall pay the difference to the Owner.

- P. The successful Bidder, simultaneously with the execution of the Agreement, is required to furnish a faithful Performance Bond in an amount equal to one hundred percent (100%) of the Agreement amount and a Labor and Material Payment Bond equal to one hundred percent (100%) of the Agreement amount; said Bonds shall be secured from a surety company satisfactory to the Owner.

- Q. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

By: _____

By: _____

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

License No. _____
(Where applicable)

Agent for service of process: _____

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

END OF SECTION

NOTICE TO PROCEED

Date: _____

To: _____
(Name of Contractor)

Address: _____

Contract: _____

Project: _____

OWNER'S CONTRACT NO. _____

You are notified that the Contract Times under the above contract will commence to run on _____
_____ By that date, you are to start performing your obligations under the Contract
Documents. In accordance with the Agreement, the date of Substantial Completion is _____
_____ and the date of readiness for final payment is _____

In addition, before you may start any Work at the Site, you must

By: _____
(Owner)

(Authorized Signature)

(Title)

END OF SECTION