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Strengthening
Vermont Local
Governments*

MEMORANDUM

To: Municipal Officials
From: PACIF and the VLCT Municipal Assistance Center
Date: May, 2016
RE: Short Form Model Contract for Limited Services

VLCT has developed the attached Short Form Model Contract for Limited Services to assist municipalities that contract for services. Please review this model contract and customize it to meet the needs of your municipality and the parameters of the service to be provided by the contractor. **Opportunities for customizing this model contract are marked with text shown as *[italicized text]* which should be modified or removed as applicable.**

PLEASE NOTE that this contract is intended for contracts for limited services up to \$100,000. Large contracts over \$100,000 should be based on VLCT's Model Contract for Highway Maintenance and Repair, which can be customized for any service.

After customizing this model contract and before signing it, the Municipality should have the municipal attorney review it and ensure that there is no conflict with any federal, state law, or municipal conflict of interest policy or ordinance and that there is no unnecessary exposure to liability for the municipality. The contract should also be sent to PACIF for risk management advice prior to completion.

Bidding requirements: There is no state statute that requires town contracts to be put out to bid. However, a municipality may have its own bidding or purchasing policy in place that requires the use of a formal bidding process. In addition, when state or federal grants are used to pay for goods or services, the granting authority may require such process.

If you have questions about this model contract or about your liability exposure for highway maintenance, repair or improvements, please contact your PACIF Loss Control Consultant.

Sponsor of:

VLCT Employment
Resource and Benefits
Trust, Inc.

VLCT Municipal
Assistance Center

VLCT Property and
Casualty Intermunicipal
Fund, Inc.

CONTRACT FOR SERVICES

(Short Form for Small Contracts)

This Contract is entered into on *[insert day, month, year]*, by and between *[insert name of municipality]* (hereinafter "Municipality") and *[insert name of contractor]*, a *[insert type of entity such as "limited liability corporation"]* with a principal place of business in *[insert name of location]*, Vermont, with a mailing address of *[insert mailing address]*, (hereinafter "Contractor") for services to Municipality. Municipality and Contractor are referred to collectively as "parties."

In consideration of the mutual covenants and agreements as hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1: SERVICES PROVIDED

Contractor agrees to perform the following service(s) according to the following timelines or schedule:

[Describe the service(s) to be provided and any applicable timelines or schedules for starting and/or completing the work.]

Contractor shall perform all services required under this Agreement in a good workmanlike manner consistent with industry standards and according to the specifications and performance standards established by Town, if any. Town has the right to inspect and may reject any services provided by Contractor under this Agreement that, in the Town's determination, were not completed in a good workmanlike manner or that otherwise failed to satisfy the established specifications or performance standards.

ARTICLE 2: COMPENSATION AND BILLING

Compensation for the above services will be *[Insert applicable terms for rate of payment and timing of payment]*.

Invoices and Billing: *[Insert applicable terms and timing for invoicing and billing]*

ARTICLE 3: TERM

The term of this contract shall be from *[insert start date]* to *[insert end date]*. The term of the contract may be extended only by mutual written agreement of the parties.

ARTICLE 4: INDEPENDENT CONTRACTOR

Contractor further acknowledges and agrees that it is an independent contractor and that nothing herein shall be construed to create the relationship of employer and employee between Municipality and Contractor. No employee-related withholdings or deductions shall be made from payments due Contractor. Contractor shall not be entitled to receive any benefits from Municipality and shall not be eligible for workers' compensation or unemployment benefits.

ARTICLE 5: ASSIGNMENT AND SUBCONTRACTING

This Contract is binding upon and inures to the benefit of the heirs, successors and assigns of the parties hereto. Neither party hereto may assign its rights or obligations under the Contract without the prior written consent of the other party. This Contract shall be governed by the laws of the State of Vermont.

Contractor shall not enter into any subcontract for performance of any services contemplated under this Contract nor assign any interest in the Contract without the prior written approval of Municipality and subject to such conditions and provisions as Municipality may deem necessary or desirable in its sole discretion. If Municipality permits the use of subcontractors, no subcontractor may perform any work under this Contract without first providing Municipality certificates of insurance showing all of the coverages required in Article 10 of this Contract. Contractor shall be responsible for the performance of all subcontractors. Before paying a claim that involves the use of materials or labor supplied by someone other than the Contractor, Municipality may require Contractor to supply proof of payment for such materials or labor. Contractor shall pay the subcontractor(s) for undisputed services provided by them within [*insert number*] days of receiving payment from Municipality.

ARTICLE 6: EQUIPMENT AND MATERIALS

Contractor warrants that it has the necessary equipment to provide the services required by this Agreement. All materials used or supplied under this Agreement shall be of first quality and meet the specifications established by Town, if any. Contractor will be solely responsible for supplying, storing, maintaining, and replacing any and all equipment that is necessary for implementing the services under this contract. Municipality will not supply, nor will it pay for any repairs, maintenance or replacement of, or new equipment expenses, or temporary work related to signs, cones, or other traffic controlling equipment.

Municipality is exempt from sales tax on purchases for materials and products that are permanently incorporated into the infrastructure. Contractor shall pay all legal costs and assessed penalties for improper use of the Contractor's exemption certificate number.

ARTICLE 7: PERSONNEL

Contractor is responsible for compliance with all applicable State and Federal laws. Contractor will manage his/her own personnel without general oversight by the Municipality and shall oversee and coordinate sub-contractors that are approved by Municipality. All drivers and equipment operators will be properly trained and have all certifications and valid licensing required to operate said equipment. The Contractor must certify to the Municipality that all drivers operating a commercial motor vehicle are in a federally mandated random drug and alcohol testing program that complies with Federal Motor Carrier Safety Administration (FMCSA) requirements.

Contractor alone shall be responsible for ensuring compliance with all applicable regulatory requirements including but not limited to those from FMCSA and Vermont Occupational Safety and Health Administration (VOSHA).

Contractor further agrees to include this provision in all subcontracts.

ARTICLE 8: SAFETY AND TRAFFIC CONTROL

The Contractor alone shall be responsible for the safety and security at construction sites and when working in or adjacent to public highways. Contractor is solely responsible for traffic control, which practices shall comply with the Manual on Uniform Traffic Control Devices, latest edition.

The contractor is responsible for contacting Dig Safe prior to any excavation. No excavation is authorized until after Dig Safe has marked all existing utilities. Prior to construction, the contractor shall notify Municipality of adjacent utilities when prosecution of work may affect them.

ARTICLE 9: INDEMNIFICATION

Contractor shall indemnify and hold harmless Municipality and Municipality's agents and employees, from and against all losses and all claims, demands, payments, suits, actions, recoveries, claims of outstanding indebtedness, attorneys fees, liens, and judgments of every nature, and description brought or recovered against them by reasons of any act or omission of the said Contractor, its agents, employees, or sub-contractors, in the execution of the work or in guarding the same. The Contractor shall defend the Municipality and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Contractor or of any agent or subcontractor of the Contractor. The Municipality shall notify the Contractor in the event of any such claim or suit, and the Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

Contractor shall assume full responsibility for the protection of all buildings, structures and utilities (both public and private). All damage, injury or loss to any public or private property, by the Contractor, or any sub-contractor, shall be replaced or restored to at least the original condition to the satisfaction of the Municipality at the Contractor's expense.

Nothing in this Contract shall constitute a waiver by the Municipality of any statutory limits or immunities from liability.

ARTICLE 10: INSURANCE

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the following minimum coverages are in effect. Contractor agrees that it will provide and maintain during the entire term of this Agreement the following insurances with at least the indicated amounts of coverage and provide Municipality a certificate of insurance showing such coverages before providing any services under this Agreement: (1) Commercial General Liability insurance coverage with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 in aggregate; (2) Business Automobile Liability coverage with total liability limits of at least \$1,000,000; and (3)

Statutory Workers' Compensation insurance. If Contractor is not required by law to carry workers' compensation insurance, in place of proof of workers' compensation insurance Contractor may provide a fully executed Non Employee Work Agreement specifying the particular provision of 21 V.S.A §601(14)(F) that exempts Contractor from having to carry such coverage.

The Contractors policies shall name the Municipality as an additional insured.

ARTICLE 11: WARRANTY AND BOND

Contractor warrants all work performed under this Contract for a period of one year from the date the work is completed and accepted by Municipality. The warranty must be secured either by Contractor's performance bond or such other security as is acceptable to Municipality.

ARTICLE 12: NON-APPROPRIATION

If this Contract extends into more than one fiscal year of the Municipality and if appropriations are insufficient to support this Contract, the Municipality may cancel at the end of the fiscal year. In the case that this Contract is a Grant that is funded in whole or in part by federal or State funds, and in the event federal or State funds become unavailable or reduced, the Municipality may suspend or cancel this Grant immediately, and the Municipality shall have no obligation to pay Contractor from municipal revenues.

ARTICLE 13: TERMINATION

Municipality may terminate this Agreement, with or without cause, upon 30 days written notice.

ARTICLE 14: DEFAULT

The occurrence of any of the following shall constitute default by Contractor and, if not corrected within 10 days of Municipality providing Contractor written notice of the default, shall allow Municipality to terminate this contract:

- (1) failure to adequately perform or deliver the required services;
- (2) if applicable, failure to provide the required bonds or other security acceptable to Municipality before starting any work;
- (5) declaration of bankruptcy by Contractor;
- (6) making a material misrepresentation to Municipality;
- (7) persistently disregarding laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
- (8) failure to perform any other material provision of this Contract.

Upon default of this contract by Contractor, Municipality may withhold any payment due Contractor for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute default or failure to perform on the part of Municipality.

Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to any of the following uncontrollable circumstances unless the act or occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, acts of public authorities, or delays or defaults caused by public carriers; provided the non-performing party gives notice as soon as possible to the other party of the inability to perform. The Municipality and the Contractor agree to attempt to resolve quickly all matters related to uncontrollable circumstances and use all reasonable effort to mitigate its effects.

In addition to the above, in the event of a State or Federal Disaster Declaration, Municipality reserves the right to suspend certain provisions of this contract to conform with FEMA or Vermont Emergency Management regulations and directives.

Upon completion of the work or upon termination of the Contract, the Contractor shall remove from the vicinity of the work all equipment and all temporary structures, waste materials and rubbish resulting from its operations, leaving the premises in a neat and presentable condition. In the event of failure to do so, the same may be done by the Municipality at the expense of the Contractor.

ARTICLE 15: REMEDIES

Default or breach of this contract by Contractor shall entitle Municipality to seek remedies under law and as provided by this Contract. In the event this Contract is terminated by reason of default by Contractor, Municipality may recover the necessary costs of termination, including but not limited to, administrative, attorneys fees and legal costs, from Contractor. Except when caused by uncontrollable circumstances, if Contractor fails to meet any performance deadlines established by this Contract, or fails to perform in accordance with the specification, terms, and conditions of this Contract, Municipality shall have the right to purchase the services and materials from other sources on the open market or to purchase those items necessary to continue functioning until delivery from Contractor is complete. Municipality may deduct as damages from any money due or coming due to Contractor the differences between Contractor's price and the higher price or the costs of temporary items. Municipality may require Contractor, at Contractor's sole expense, to re-perform any items of work provided for in this Contract that do not meet the established specifications, standards, or Municipality directives.

Any remedies available to Municipality are cumulative and not exclusive. The seeking or exercising by Municipality of a remedy does not waive its right to seek or exercise any other remedy available to it at law, in equity, by statute, or under this Contract.

ARTICLE 16: ARBITRATION

Should disputes arise between the Contractor and the Municipality about this contract or any related matter, the parties agree to arbitrate any such controversy, pursuant to the Vermont Arbitration Act, 12 V.S.A. § 5651 et seq.

ARTICLE 17: CONTRACT DOCUMENTS

This Contract shall constitute the entire agreement between the parties on the subject matters. All prior agreements, representations, statements, negotiations, and understandings shall have no effect. There shall be no modifications or amendments to this Contract or to the Addendum unless said changes, modifications or amendments are in writing duly executed by the parties.

ARTICLE 18: SEVERABILITY

The provisions of this contract are severable and if a court of competent jurisdiction holds any portion of this contract unconstitutional or invalid, the remainder of this Contract shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties do hereby execute this Contract on the day and year first written above.

MUNICIPALITY: By the members of its Selectboard:

In the presence of:

Witness as to Municipality

CONTRACTOR:

By: _____
[insert name and title], duly authorized representative of Contractor

In the presence of:

Witness as to Contractor

ACKNOWLEDGMENT OF ARBITRATION.

We understand that this contract contains an agreement to arbitrate. After signing this document, we understand that we will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, we agree to submit any such dispute to an impartial arbitrator.

MUNICIPALITY: By the members of its Selectboard:

In the presence of:

Witness as to Municipality

BY CONTRACTOR:

By: _____
[insert name and title], duly authorized representative of Contractor

In the presence of:

Witness as to Contractor