THE UNIVERSITY OF VERMONT & STATE AGRICULTURAL COLLEGE

Terms and Conditions for
SERVICES CONTRACTOR AGREEMENT

COMPENSATION AND REIMBURSEMENT

The Services Contractor shall submit invoices to The University of Vermont & State Agricultural College (Owner) on a monthly basis or upon completion of the work for services and reimbursable expenses performed under the accepted proposal, unless other mutually satisfactory arrangements have been made between the Services Contractor and Owner. If the Services Contractor does not receive payment within thirty (30) calendar days from receipt of invoice, the Owner shall pay interest at an annual rate of eight percent (8%) of the past due amount. If the Owner fails to make payments when due or otherwise is in breach of the Agreement, the Services Contractor may suspend performance of services upon five (5) business days after written notice to the Owner.

ADDITIONAL SCOPE OF WORK

Should the scope of work, as defined in the Agreement, expand beyond that of the original Agreement then the Services Contractor shall notify the Owner in writing that additional services are required. Additional work, beyond that listed in the Agreement, and as mutually agreed upon by the Owner and the Services Contractor shall be billed at hourly rates established at the time of the Agreement and at mutually agreed upon annually adjusted rates.

ACCESS TO SITE

Unless otherwise stated, the Services Contractor shall have access to the site for activities necessary for the performance of services. Should the Services Contractor cause damage or create an unsafe environment then the Services Contractor shall be responsible for restoration and repair to the original condition. Arrangements/permissions for site access shall be coordinated through the Owner, unless otherwise stated or agreed upon. The Owner shall provide the Services Contractor the right to enter the property owned by the Owner in order for the Services Contractor to fulfill the scope of work included in the Agreement. The Owner understands that the use of testing or other equipment may be necessary to complete the scope of work and that damage caused by this equipment may occur. Therefore prior to the commencement of work, which may cause such damage, the Services Contractor and Owner shall mutually agree upon repair and restoration actions and responsibilities.

BURIED UTILITIES (not required)

The Services Contractor and or its authorized sub-contractor will conduct the research that in its professional opinion is necessary with respect to the assumed locations of underground installations. Such services by the Services Contractor or its sub-contractor will be performed in a manner consistent with ordinary standard care. The Owner recognizes that the research may not identify all underground installations and that the information upon which the Services Contractor relies may contain errors or may not be complete.

HAZARDOUS MATERIALS

During the process of their service should the Services Contractor identify or encounter hazardous materials they shall immediately cease work and contact the Owner. Remediation and expenses associated with abatement shall be the responsibility of the Owner, unless the Services Contractor introduced the hazardous material to the site, where it shall become the responsibility of the Services Contractor to immediately cease work and contact the Owner. In this instance, the expenses of abatement or remediation shall be the responsibility of the Services Contractor.
INDEMNIFICATION

To the fullest extent permitted by law the Services Contractor shall defend, indemnify and hold harmless the Owner, its employees, officers, and directors, the Consultant and sub-consultants, and agents and employees of any of them from and against claims, damages, losses and expenses arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the work itself), caused in whole or in part by the negligent acts or omissions of the Services Contractor, sub-contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder; provided, however, that the indemnification obligation set forth in this section shall not apply in the case of claims arising from the sole negligence of any indemnified party. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section.

In claims against any person or entity indemnified under this section by an employee of the Services Contractor, sub-contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Services Contractor or a sub-contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

To the fullest extent permitted by law, the Services Contractor shall protect, indemnify, defend, and hold harmless the Owner from and against all claims, costs, liabilities, damages, losses and expenses (including attorney’s fees) arising out of, or in connection with, any act, error, omission or breach of this Agreement by the Services Contractor, its employees, or sub-contractors in the performance of its services pursuant to the Agreement.

RECORD DOCUMENTS (not required)

The Services Contractor shall maintain at the site for the Owner one (1) record copy of the drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one (1) record copy of shop drawings, product data, samples and similar required submittals. These shall be available to the Consultant or Owner’s Representative during construction and shall be delivered to the Consultant for submittal to the Owner upon completion of the work as a record of the work constructed. In the absence of a Consultant on the Project, these documents shall be delivered directly to the Owner.

Within a reasonable time after the date of final completion of the Project, and prior to final payment, the Services Contractor shall prepare and furnish to the Consultant one (1) set of record drawings of the work, revised to show all known Services Contractor recorded changes which occurred during the construction of the work, including all changes or other deviations from the original Contract Documents, and to include the changes made to the Services Contractor’s record copy of the Contract Documents as described in this section, for this Project. The Services Contractor shall certify to the Owner and Consultant that such final record drawings are adequate to show all significant changes in the work made during construction by the Services Contractor. Prior to final payment, the Services Contractor shall furnish the Consultant with a copy of the Project Manual, as amended during the design and construction of the Project. In the absence of a Consultant, these documents shall be delivered directly to the Owner.

OWNERSHIP OF DOCUMENTS

All documents (including documents in electronic, as well as in paper or other form) produced by the Services Contractor under this Agreement shall become the property of the Owner upon the completion of the work. The Owner shall not reuse any plans, details, or proprietary information for other projects without consent from the Services Contractor.

TERMINATION

This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party substantially fail to perform in accordance with the terms of this Agreement through no fault of the party initiating termination, with each party to reserve their rights and remedies as permitted under the law. This Agreement may be terminated by the Owner upon at least fifteen (15) days written notice to the Services Contractor for the Owner’s
convenience and without cause. In the event the Owner so terminates this Agreement without cause, the Services Contractor shall be compensated for work or services performed prior to the termination, and authorized reimbursable expenses, but such payments due the Services Contractor shall not include any profit on work or services not performed.

CLAIMS, DISPUTE RESOLUTION, CONSENT TO JURISDICTION AND WAIVER OF JURY TRIAL

Claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof shall be subject to whatever formal or informal dispute resolution mechanisms as are agreeable to both parties, with both parties retaining the right to seek judicial resolution in the courts located in the State of Vermont having jurisdiction. The Services Contractor consents to the jurisdiction of the State of Vermont Chittenden Superior Court in Burlington, Vermont, or (assuming the other prerequisites for federal subject matter jurisdiction are met) the United States District Court for the District of Vermont. In any litigation, the parties agree to waive the right to a jury trial.

GOVERNING LAW

The Owner and Services Contractor agree that all disputes arising out of or in any way connected to the Agreement, its validity, interpretation and performance, and remedies for breach of contract, or any other claims related to this Agreement shall be governed by the laws of the State of Vermont.

ASSIGNMENT

Neither party to the Agreement shall transfer, sublet, or assign any rights under or interest in the Agreement without prior written consent of the other party.

ATTORNEY’S FEES

In the event of litigation arising from or related to the services provided under the Agreement, the prevailing party shall be entitled to recovery of all reasonable costs incurred, including staff time, court costs, reasonable attorney’s fees and other related reasonable expenses.

INSURANCE

The Services Contractor shall obtain and maintain the types and amounts of insurance set forth below, such insurance to be in form satisfactory to the Owner and maintained with responsible insurance carriers qualified to do business in the State of Vermont and approved by the Owner. The Contractor shall determine bonding and appropriate limits of liability coverage for all other subcontractors. Liability insurance policies shall name the Owner as an additional insured.

1. **Workers’ Compensation and Employers’ Liability Insurance.** Workers’ Compensation in accordance with Vermont statutory requirements and Employers’ Liability in the amount of $1,000,000 each occurrence for U.S. employees assigned to the Project. Policy shall include Other States coverage to extend coverage to all states except monopolistic states and a waiver of subrogation clause to preclude the insurance company from pursuing the University for workers compensation losses paid.

2. **Commercial General Liability.** Commercial General Liability (excluding Automobile Liability) with a limit of liability not less than the amount of $1,000,000 each occurrence, combined single limit for both bodily injury and property damage liability coverages, and $1,000,000 aggregated annually to this Project. This coverage shall be extended to include:
   
   a. Blanket Contractual Liability coverage, with no exclusion for the “Explosion, Collapse, or Underground Hazards”, nor may this coverage be restricted respecting the relative degree of negligence;
   
   b. Products and Completed Operations coverage including extension of the policy term for five (5) years beyond acceptance by the Owner;
   
   c. Broad Form Property Damage coverage;
d. Personal Injury Liability with Employee Exclusion deleted;

e. No “Explosion, Collapse, or Underground Hazard” exclusions;

f. Incidental Medical Malpractice coverage.

3. **Commercial Automobile Liability.** Commercial Automobile Liability coverage of all owned, Non-Owned or Hired Motor Vehicles with combined limits of liability of $1,000,000 for bodily injury and property damage, each occurrence, to be written on a Symbol 1 basis, to include “any” auto.

4. **Umbrella Excess Liability Protection.** Umbrella Excess Liability coverage excess over and following the coverage provisions of the primary Commercial General Liability, and Commercial Automobile Liability coverages specified in the amount of $5,000,000 each occurrence, combined single limit and $5,000,000 aggregate for each annual policy period. For projects valued greater than $10,000,000, a $10,000,000 umbrella policy is required.

5. **Owners and Services Contractors Protective Liability** insurance in the amount of $1,000,000 to protect the Owner from contingent liabilities for damages because of bodily injury, including death, which may arise from the Services Contractor’s operations under this contract and any other liabilities for damages which the Services Contractor is required to insure under any provisions of this Agreement.

6. **Builders Risk Insurance.** For all projects involving new construction, the Services Contractor shall provide a Builders Risk Policy written with an insurance company which is acceptable to the University with a limit of liability of 100% of completed value. Coverage shall be on an “all risk” form and shall extend to building materials, tools, and equipment on or within 100 feet of the premises. This insurance shall include the interest of the University, the Services Contractor, subcontractors, and sub-subcontractors involved in the work.

The contractor shall affect and maintain “all risk” property insurance on portions of the work stored off site or in transit when such portions of the work are to be included in Application for Payment.

Once the Project is completed and suitable for occupancy, the University will provide “all risk” property insurance on the Project, subject to the Services Contractor providing formal written notice to the University stating its intent to cease coverage it carries because of Project completion.

A loss insured under the Services Contractor’s Builders Risk Policy shall be adjusted under terms of the insurance contract and will be payable to the University as its interests may appear. The Services Contractor and its subcontractors shall receive their just shares of the insurance proceeds, as their interests may appear, also.

For projects involving renovation to existing buildings, the Owner shall provide the Builders Risk Policy. Such Policy is subject to a $250,000 per occurrence deductible. In the event of property damage, the deductible shall be paid by the Services Contractor, at no expense to the Owner. The Services Contractor may opt to maintain a Builders Risk Buy-Down Insurance Policy to cover the deductible.

7. **Performance Bond and Payment Bond:** For any projects whose completed value is estimated at greater than $150,000, the Contractor shall deliver to the Owner, at the time of execution of this contract, a Performance Bond equal to 100% of the Contract sum, with UVM named as obligee. For all projects, regardless of completed value, the Contractor shall provide a Labor and Materials Payment Bond in an amount equal to 100% of the Contract. Bonds shall be in a form approved by the Owner. Surety shall be acceptable to the Owner. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

8. The Services Contractor’s Equipment Floater to cover loss from physical damage to equipment used by the Services Contractor during construction.
Failure of the Services Contractor to maintain any required insurance shall not relieve the Services Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Services Contractor concerning indemnification. The Services Contractor’s policies shall be considered primary insurance and exclusive of any insurance carried by the University.

NON-DISCRIMINATION

Equal Opportunity: During the performance of the work under this Agreement the Services Contractor agrees as follows: The Services Contractor will not discriminate against any employee or application for employment because of race, color, sex, religion, sexual orientation, national origin, age, disability, or status as a disabled or Vietnam era veteran. The Services Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to race, color, sex, religion, sexual orientation, national origin, age, disability or status as a disabled Vietnam era veteran. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other terms of employment.

TIME IS OF THE ESSENCE

Time limits stated in these Terms and Conditions and the Services Contractor Services Agreement are of the essence. By executing the Agreement the Services Contractor confirms that the contract time is a reasonable period for performing the services. Services Contractor’s services shall be commenced as provided in the Services Contractor Services Agreement, or as otherwise agreed by the parties and, subject to authorized adjustments mutually agreed to in writing, shall be completed in accordance with the time limits in the Services Contractor Services Agreement.

MISCELLANEOUS

These terms and conditions, and the Services Contractor Services Agreement to which these terms and conditions relate are intended to supersede all prior understandings or discussions pertaining to the work or services to be performed. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties.

INTEGRATION OF DOCUMENTS

In the event any provision contained in the Services Contractor’s proposal attached to the Services Contractor Services Agreement as Exhibit A contradicts the terms of the Services Contractor Services Agreement or these Terms and Conditions, the provisions of the Services Contractor Services Agreement or these Terms and Conditions shall control and be binding on the parties.

ACKNOWLEDGMENT OF TERMS AND CONDITIONS

The parties acknowledge receipt of these Terms and Conditions as part of the services contract to which they relate:

OWNER: The University Of Vermont & State Agricultural College

(Signature) Robert B. Vaughan, Director of Capital Planning & Management
(Printed name and title) Its duly authorized representative
(Date)

SERVICES CONTRACTOR:

(Signature) (Printed name and title) Its duly authorized representative
(Date)