

GENERAL TERMS AND CONDITIONS

Attached to and incorporated into the Proposal that, as executed, shall serve as an agreement between [Town of Hinesburg, VT (Client) and EcoStrategies, LLC (Consultant) dated November 24, 2013 in respect of the Project described therein.

1.0 GENERAL

The Consultant shall perform for the Client professional consulting services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as the Client's professional consulting representative for the Project.

Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken, and all remaining provisions shall continue valid and binding upon the parties. Client and Consultant shall attempt in good faith to replace any invalid or unenforceable provisions of this Agreement with provisions which are valid and enforceable and which come as close as possible to expressing the intention of the original provisions.

Client shall reimburse Consultant for all costs of modifications and any additional services required to comply with laws, rules or regulations first coming into effect after the signing of this agreement, charges for which will be based on the Consultant's fee schedule at the time the additional services are performed. It is understood that various codes and regulations are subject to varying and sometimes contradictory interpretation. Consultant will exercise its professional skill and care consistent with the generally accepted standard of care to provide a work product that complies with such regulations and codes. Consultant cannot warrant that all documents issued by it shall comply with said regulations and codes.

2.0 MEANING OF TERMS

As used herein the term "Agreement" refers to the Proposal Letter or Agreement to which these General Terms and Conditions are attached as if they were part of one and the same document.

3.0 CLIENT'S RESPONSIBILITIES

Client shall:

- Provide all criteria and full information as to Client's requirements for the Project,
- Designate a person to act with authority on the Client's behalf in respect to all aspects of the Project,
- Examine and respond promptly to the Consultant's submissions,

- Give prompt written notice to the Consultant whenever the Client observes or otherwise becomes aware of any perceived defect in the work,
- Guarantee access to and make all provisions for the Consultant to enter upon public and private property,
- As appropriate and required by law be responsible for reporting certain significant environmental hazards of contaminated property.

Unless otherwise specifically indicated in writing, Consultant shall be entitled to rely, without liability, on the accuracy and completeness of information provided by Client, Client's consultants and contractors, and information from public records, without the need for independent verification.

Client acknowledges that if Consultant's professional services involve the use of vehicles or other equipment as part of Project, some damage to the project site could occur. Client understands that unless specifically stated in the Agreement, and provided Consultant uses reasonable care, correction of such damage is not the responsibility of Consultant.

4.0 REUSE OF DOCUMENTS

All documents, including reports, electronic media, drawings and specifications, prepared or furnished by Consultant and its subsidiaries, independent professional associates, subconsultants and subcontractors pursuant to this Agreement are instruments of service in respect of a particular Project and the Consultant shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies of such documents for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for reuse by Client, including extensions of the Project or on any other project, nor are they to be relied upon by anyone other than Client.

Copies of documents that may be relied upon by Client are limited to printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic or other types that are furnished by Consultant to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of this Project.

Any reuse, modification or disbursement of documents to third parties without written consent and project-specific adaptation by the Consultant will be at the Client's sole risk and without liability or legal exposure to Consultant or its subsidiaries, independent professional associates, subconsultants, and subcontractors. Accordingly, Client shall, to the fullest extent by law, defend, indemnify and hold harmless the Consultant from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from such unauthorized reuse, modification or disbursement. If it is necessary to distribute any documents to an unrelated third party, the Client agrees and will insure that:

1. The third party is bound by all of the conditions and limitations of this Agreement and related documents;
2. The third party is bound by all limitations of liability or indemnity provisions; and,
3. The limitation of liability set forth in Section 12 is an aggregate limit and the Client does not have the right or duty to apportion the limitation amount between itself and the third party.

Any or Project-specific adaptation by Consultant will entitle the Consultant to further compensation at rates to be agreed upon by Client and the Consultant.

5.0 OPINIONS OF COST

Since the Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, the Consultant's opinions of probable total project costs and construction cost are to be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified professional; but the Consultant cannot and does not guarantee that proposals, bids or actual total project or construction costs will not vary from opinions of probable cost prepared by the Consultant. If prior to the bidding or negotiating phase the Client wishes greater assurance as to total project or construction costs, the Client shall employ an independent cost estimator.

6.0 SUCCESSORS AND ASSIGNS

6.1 Neither the Client nor the Consultant shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or

discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Consultant from employing such independent professional associates and consultants, as the Consultant may deem appropriate to assist in the performance of services hereunder.

6.2 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party.

7.0 MEDIATION

Prior to the initiation of any legal proceedings, the parties to this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a written request to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the State of Vermont.

8.0 PURCHASE ORDERS

In the event the Client issues a purchase order or other instrument related to the Consultant's services, it is understood and agreed that such document is for the Client's internal accounting purposes only and shall in no way modify, add to, or delete any of the terms and conditions of this Agreement. If the Client does issue a purchase order or other similar instrument, it is understood and agreed that the Consultant shall indicate the purchase order number on the invoices sent to the Client.

9.0 SUBCONSULTANTS

Except as expressly agreed, the Client will directly retain other consultants whose services are required in connection with the Project. As a service, the Consultant will advise the Client with respect to selecting other consultants and will assist the Client in coordinating and monitoring the performance of other consultants. In no event will the Consultant assume any liability or responsibility for the work performed by other consultants, or for their failure to perform any work,

regardless of whether the Consultant hires them directly or as subconsultants, or only coordinates and monitors their work. When the Consultant does engage a subconsultant on behalf of the Client, the expenses incurred, including rental of special equipment necessary for the work, will be billed as they are incurred, subject to an administrative markup of 15 percent or as specified in the rate table or billing terms in effect at the time the services are provided. By engaging the Consultant to perform services, the Client agrees to hold the Consultant, its directors, officers, employees, and other agents harmless against any claims, demands, costs, or judgments relating in any way to the performance or non-performance of work by another consultant or subconsultant, except claims for personal injury, death, or personal property damage caused by the negligence of the Consultant's employees.

10.0 INDEMNIFICATION

10.1 Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the Client and Consultant, they shall be borne by each party in proportion to its negligence.

10.2 Neither party shall have liability for loss of product, loss of profit, loss of use, or any other indirect, incidental, special, or consequential damages incurred by the other party, whether brought as an action for breach of contract, breach of warranty, tort, or strict liability, and irrespective of whether caused or allegedly caused by either party's negligence and the Client agrees to defend, indemnify and hold the Consultant harmless with respect to any such claim. The Client and Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in this Project to carry out the intent of this provision.

10.3 The Consultant and the Client agree that should the Consultant's services not include construction phase services, the Client shall be solely responsible for interpreting any contract documents and observing the work of the Contractor to discover, correct or mitigate errors, inconsistencies or omissions. If the Client authorizes deviations, recorded or unrecorded, from the documents prepared by the Consultant, the Client shall not bring any claim against the Consultant and shall indemnify and hold the Consultant, its agents and employees harmless from and against claims, losses, damages and expenses, including but not limited to defense costs and the time of the Consultant, to the extent such claim, loss, damage or expense arises out of or results

in whole or in part from such deviations, regardless of whether or not such claim, loss, damage or expense is caused in part by a party indemnified under this provision.

10.4 In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations.

11.0 LIMITATION OF LIABILITY

Notwithstanding any other provision of these General Terms and Conditions, and unless otherwise subject to a greater limitation, the Consultant's liability to the Client for any loss or damage, including, but not limited to, special and consequential damages, arising out of or in connection with the accompanying Proposal or any related Agreement from any cause, including the Consultant's professional negligent errors or omissions shall not exceed the greater of \$25,000 or the total compensation received by the Consultant hereunder, and the Client hereby releases the Consultant from any liability above such amount.

12.0 CHANGES OR DELAYS

Unless the accompanying Agreement/Proposal provides otherwise, the proposed fees constitute the Consultant's estimate to perform the services required to complete the Project, as the Consultant understands it to be defined. For those projects involving conceptual or process development work, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. The Consultant will inform the Client of such situations so that negotiation of change in scope and adjustment to the time of performance can be accomplished as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified accordingly.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities or information, Client's failure to make payment in accordance with its obligations under this Agreement, or for delays caused by unpredictable occurrences or force majeure, including but not limited to fires, floods, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdown, acts of God, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above may result in additional cost (reflecting a change in scope) beyond that outlined the Agreement.

13.0 PAYMENT

Consultant shall typically invoice Client for services performed under this agreement on a monthly basis, and Client shall pay Consultant's invoices within thirty (30) days of receipt. Client agrees to bring to Consultant's attention in writing any questions regarding Consultant's invoice within ten (15) days of receipt. In the event that Client does not provide Consultant with written or verbal questions within ten (15) days, the invoice shall be deemed accurate and acceptable to Client. If Client fails to make any payment due the Consultant for services, expenses or other charges within thirty (30) days after receipt of the Consultant's statement therefore, the amounts due the Consultant will be increased at the rate of one and one half (1.5) percent per month from said thirtieth day, and in addition, the Consultant may, after giving a minimum of seven (7) days written notice to the Client, suspend services under this Agreement until the Consultant has been paid in full all amounts due for services, expenses and charges. Consultant may at its sole discretion also suspend services on any or all other projects being performed by Consultant for Client under any other agreements until Consultant has been paid in full for all amounts due for services, expenses and any other charges. The Client shall be responsible for the reasonable cost of collection including reasonable attorney's fees.

15.0 TERMINATION

The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event either party fails to substantially perform in accordance with the terms to this Agreement through no fault of the terminating party. In the event of any termination, the Consultant will be paid for all services rendered to the date of termination, all reimbursable expenses and termination expenses. Failure to make payments in accordance herewith shall constitute substantial nonperformance. This Agreement shall automatically terminate if payments are not brought current within seven (7) days of notice of termination.

16.0 CONTROLLING LAW

This Agreement is to be governed by the law of the State of Vermont.

17.0 SUBSURFACE INVESTIGATIONS

Client recognizes that special risks occur whenever Consultant's subcontractors including engineering and related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with appropriate equipment and experienced personnel under the direction of a trained professional who functions in accordance with a professional standard of practice may fail to detect certain

hidden conditions. The passage of time also must be considered, and the Client recognizes that due to natural occurrences or direct or indirect human intervention at the Site or distance from it, actual conditions may quickly change. Provided the Consultant's subcontractors use reasonable care, the Consultant shall not be liable for its subcontractor's alteration or damage or for damage to, or interference with any subterranean structure, pipe, tank, cable, or other element or condition whose nature and location are not called to the Consultant's attention in writing before exploration commences.

18.0 INSURANCE

The Consultant will secure and maintain such insurance as will protect him from claims under the Workmen's Compensation Act and from claims for bodily injury, death or property damage which may arise from the performance of Consultant's services under this Agreement.

The Consultant will secure and maintain professional liability insurance for protection against claims arising out of the performance of professional services under this Agreement caused by negligent errors or omissions for which the Consultant is legally liable.

20.0 PERIOD OF SERVICE

The Consultant shall proceed with the services under this Agreement promptly and will diligently and faithfully prosecute the work to completion.

21.0 NOTICE REQUIREMENTS

If Client alleges that it has discovered a negligent defect, fault, error, non-compliance or omission in Consultant's services, it shall give written notice to the Consultant within thirty (30) days. Notice shall include a detailed description of the nature of the alleged negligent defect, fault, error, non-compliance or omission. Client agrees that failure to give such notice shall result in Client's waiver of the claim. Additionally, Client agrees that failure to give such notice from the time it reasonably should have discovered any alleged defect, fault, error, non-compliance or omission in Consultant's services, and failed to give proper notice, shall result in Client's waiver of the claim.

22.0 PROPRIETARY RIGHTS OF CONSULTANT

Client acknowledges that Consultant has developed systems, processes, apparatus, analytical tools and methods which are proprietary to Consultant and which are used in its business. Such systems, processes, apparatus, analytical tools and methods (including software, patents, copyrights and other intellectual property), and all derivations,

enhancements or modifications thereof made by Consultant including those as a result of work performed by Consultant hereunder, shall be and remain the property of Consultant.