

April 1, 2017

Ms. Valerie Capels, Town Administrator
Town of Waitsfield
4144 Main Street (!)
Waitsfield, Vermont 05673

Re: Consulting Services Agreement for FINAL DESIGN PHASE – Amendment 3
Community Decentralized Wastewater Loan Program
Birchline Planning LLC/Orion Planning & Design Project Number 2012-1-4

Dear Valerie and Members of the Select Board,

This Agreement represents Amendment #3 for Step 3/Final Design phase services for the Town of Waitsfield Community Wastewater Loan Fund Program. As noted in the last contract amendment dated September 9, 2016, I have merged my practice with Orion Planning & Design, LLC, a six-partner LLC providing planning, landscape architecture, and project development services. This amendment, as the last one, will be billed at \$140.00/hour and will maintain the policy of not charging for travel-related expenses for this project. **This is a not-to-exceed contract with billing only as needed for services requested by the Town.**

The continued and hopefully soon to be final work effort in this phase of the project will be focused on financial closeout and the final SRF loan for the remaining balance after the project. Briefly summarized the tasks involved are:

- (1) Continued reporting and accounting support
- (2) Continued communication and review with Vermont ANR officials to ensure that all documentation of project expenses and eligibility is complete
- (3) Assist Valerie Capels, the Town Treasurer, and the Town Attorney with preparation of required Town documentation for the Vermont Municipal Bond Bank, particularly cash flow projections and documentation of the Town's ongoing financial obligations and anticipated revenues.
- (4) Work with Peter Lazorchak on final Engineering Services Agreements (ESA) and final project cost estimates for projects to be constructed.

As always, it is a privilege to serve the Town and to be able to help see this project to completion.

This AGREEMENT is written pursuant to the Town of Waitsfield's (OWNER's) request for Orion Planning + Design, LLC (CONSULTANT) to provide professional consulting services as outlined below.

SCOPE OF SERVICES

Professional consulting services are to be performed by the CONSULTANT as detailed in **Attachment No. 1** of this AGREEMENT. The OWNER may, from time to time, request changes in the scope of services to be performed under this AGREEMENT. Any changes in scope, including an increase or decrease in the amount of the CONSULTANT's compensation, shall be mutually agreed upon in writing by and between the OWNER and the CONSULTANT and shall be incorporated into this AGREEMENT by a written Amendment signed by both parties.

BASIS OF COMPENSATION

For services performed under this AGREEMENT, the OWNER agrees to compensate the CONSULTANT as follows:

I. Basic Services –

Study and Report Phase	\$	<u>n/a</u>
Preliminary Design Phase	\$	<u>n/a</u>
Final Design	\$	7,000.00 (50 hours)
Total amount of items to this AGREEMENT	\$	<u>7,000.00</u>

Billing for each work item shall be on a monthly basis as follows:

Not-To-Exceed Services (NTE): A Fee based on expenses incurred in the interest of the Project, to include professional consulting services per **Attachment No. 2**, plus reimbursable expenses per **Attachment No. 3**. The cost to the CLIENT will be at or below the NTE fee indicated for each work item above.

All invoices/bills (see **Attachment No. 5**) will accurately depict all services provided from the Agreement and any authorized Amendment date through the date of each invoice/bill. All invoices/bills to the OWNER will be formatted to comply with the current State of Vermont Department of Environmental Conservation (DEC)/Facilities Engineering Division (FED) directives.

It is understood that the CONSULTANT's labor rates are adjusted annually in January, and that the fees for services provided under this AGREEMENT and any fully executed Amendment(s) shall be the current rates at the time that the work is performed. Refer to **Attachment No. 2 – Schedule of Fees, Attachment No. 3 – Reimbursable Expenses** and **Attachment No. 4 – Level of Effort**

TERMS AND CONDITIONS

Refer to **Attachment No. 6** for the **Terms and Conditions** that govern this AGREEMENT and any fully executed Amendment(s).

EXECUTED AGREEMENT

This AGREEMENT and any fully executed Amendment(s) shall be considered binding when duly authorized agents of the CONSULTANT and the OWNER sign the document and one (1) executed copy is returned to the office of the CONSULTANT. If this AGREEMENT or any Amendment(s) are not executed within sixty (60) days of the date signed by the CONSULTANT, it may be subject to re-negotiation.

DURATION OF SERVICES

The CONSULTANT shall commence services on the Date of Execution of this Agreement, and shall fully complete all authorized services within 365 consecutive calendar days.

OFFER OF PROFESSIONAL CONSULTING SERVICES

The CONSULTANT, as an independent agent, offers to provide the professional services described in this AGREEMENT, including Attachment Nos. 1 through 6, for the compensation and duration specified.

Juli Beth Hinds



(signature)

By: Juli Beth Hinds

Title: Partner, Orion Planning & Design

April 1, 2017

(date)

OWNER ACCEPTANCE

The OWNER acknowledges this to be a binding AGREEMENT and agrees to the conditions as stated. The CONSULTANT is hereby directed to proceed with the scope of services on the Date of Execution identified below.

The OWNER acknowledges that it has the financial resources and intends to pay for services rendered in accordance with the conditions as stated herein and acknowledges that if invoices are not paid in full within sixty (60) days of date of invoice, that the

CONSULTANT may stop work, without consequence or liability of any kind, until the invoices are paid.

The OWNER warrants that the signature below is that of its duly authorized representative of the OWNER who possesses the full legal authority to execute this AGREEMENT on behalf of OWNER.

The OWNER acknowledges that this AGREEMENT is comprised of, and incorporates by reference, **Attachment Nos. 1 through 6.**

OWNER: Town of Waitsfield, Vermont

Authorized Representative

Date of Execution

Witness to Signature

Executed in Duplicate

ATTACHMENT NO. 1

SCOPE OF SERVICES

This scope of services is based on the OWNER securing financing through a State of Vermont Revolving Loan Fund (CWSRF or DWSRF) and/or Grant for this project. The CONSULTANT will perform the following scope of services.

I. Basic Services –Final Design – Step 3

Juli Beth Hinds, as Partner of Orion Planning & Design LLC, will provide project management and technical planning services through the estimated eight-month process (APRIL 1 through December 2017) of the following:

- (1) Prepare accounting per Vermont DEC and Vermont Municipal Bond Bank direction
- (2) Work with Peter Lazorchak, Valerie Capels and Vermont DEC to close out individual projects and overall project
- (3) Additional support and project management services as requested by the Town including Select Board, Vermont DEC and VMBB meetings as requested

END OF ATTACHMENT No. 1

ATTACHMENT NO. 2

Schedule of Fees

Standard Hourly Rates:

Standard hourly rates include salaries and wages paid to personnel in each billing class plus the cost of customary benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

The billing rates listed apply (for the duration of this agreement unless it is specifically amended or until December 31, 2013) for Additional Services as described in Attachment No. 1 - Scope of Services, Section V.

Billing Class / Staff Type	Hourly Rate
Partner	\$140.00

END OF ATTACHMENT NO. 2

ATTACHMENT NO. 3

Reimbursable Expenses

The expense items listed below will be billed as follows:

Subconsultant & Vendor Expenses:

Subconsultants..... @ cost
Outside Vendors @ cost

Travel Related Expenses:

Auto Travel (to include gas and other service charges)* @ \$0.55/mile
* Mileage reimbursement limited to maximum federal government rate.
As of January 1, 2012 the mileage rate is \$0.55/mile.
Other Travel (to include car rental, air fares, rentals, tolls, etc.) @ cost
Meals & Lodging @ cost

Reproduction Expenses (provided in-house):

8½ x 11 one sided copy (black/white) @ \$0.05/each
8½ x 11 two sided copy (black/white) @ \$0.10/each
24 x 36 full color print @ \$35.00/each
36 x 48 full color print @ \$60.00/each

Administrative Expenses:

Postage @ cost
Shipping @ cost
Other Administrative Expenses @ cost

END OF ATTACHMENT NO. 3

**Attachment No. 4
Level of Effort**

The labor estimates table below represents an estimated two-month process to bring the project through Final Design Engineering and ready for bid. It reflects the estimated level of effort required to provide project management, financial reporting, property owner and legal services coordination, and permitting support through the final design process. Other services have been contracted separately through the Town of Waitsfield.

	Rate Per Unit	Unit	Amount	Subtotal	Total
Task 1 – Facilities Plan Update					
<i>Professional Services</i>					
Partner (Juli Beth Hinds)	\$140.00 / hour				
Prepare accounting per Vermont DEC and Vermont Municipal Bond Bank direction		20	\$140	\$560	
Work with Peter Lazorchak, Valerie Capels and Vermont DEC to close out individual projects and overall project		15	\$140	\$840	
Additional support and project management services as requested by the Town including Select Board, Vermont DEC and VMBB meetings as requested		15	\$140	\$840	
<i>Professional Services Summary</i>		<i>50</i>			\$7,000
<i>Reimbursable Expenses</i>					
Estimated				<i>n/a</i>	
TASK SUBTOTAL					\$7,000

End of Attachment No. 4

ATTACHMENT NO. 5

As a minimum, the following information must appear on each engineering invoice/bill to project Owners expecting loan or grant reimbursement from the VT FED

Submitted Separately to Town of Waitsfield 6-7-2017

ATTACHMENT NO. 6

TERMS AND CONDITIONS

Extent of Agreement: This Agreement comprises the final and complete agreement between the Owner and the CONSULTANT. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly, has had any questions explained by independent counsel, and is satisfied. Amendments to this Agreement shall not be binding unless made in writing and signed by both the Owner and the CONSULTANT.

- 1. Billings/Payments:** Invoices will be submitted monthly by the CONSULTANT, in the format required by the Vermont DEC/FED, to the OWNER for all services provided and expenses incurred to date and, unless other mutually satisfactory arrangements have been made between the OWNER and the CONSULTANT, are due upon receipt. The invoices shall be considered past due if not paid within sixty (60) days after the invoice date and the CONSULTANT may, without waiving any claim or right against the OWNER, and without liability whatsoever to the OWNER, terminate the performance of the service. A finance charge will be assessed in the amount of 1.5% per month on unpaid balances. If the OWNER fails to make payments when due or otherwise is in breach of this AGREEMENT and any fully executed Amendments, the CONSULTANT may suspend performance of services upon five (5) calendar day notice to the OWNER. The CONSULTANT shall have no liability whatsoever to the OWNER caused by any breach of this AGREEMENT and any fully executed Amendments by the OWNER. If the OWNER fails to make payment to the CONSULTANT in accordance with the payment terms herein, this shall constitute a material breach of this AGREEMENT and shall be cause for termination by the CONSULTANT. Payment of invoices is in no case subject to unilateral discounting or set-offs by the OWNER, and payment is due regardless of suspension or termination of the AGREEMENT by either party.
- 2. Standard of Care:** Services provided by the CONSULTANT under this agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances and under their licensure by the State of Vermont.
- 3. Termination:** The OWNER or the CONSULTANT may suspend the Agreement upon giving seven (7) calendar days written notice. This AGREEMENT and any fully

executed Amendments may be terminated upon no less than thirty (30) calendar days prior written notice by either party. In the event of termination by written notice, the OWNER shall pay the CONSULTANT for all services rendered to the date of termination, all reimbursable expenses, and may include reasonable termination expenses if the termination is initiated by the OWNER.

- 4. Access to Site:** Unless otherwise stated, the CONSULTANT will have safe and legal access to the Site for activities necessary for the performance of the services. The CONSULTANT will take precautions to minimize damage due to these activities, but shall not be held responsible for the restoration of any resulting damage. Arrangements and/or permission for access to the site shall be made by the OWNER unless otherwise stated. The OWNER shall provide for the CONSULTANT's right to enter the property owned by the OWNER and/or others in order for the CONSULTANT to fulfill the scope of services included hereunder. The OWNER understands that use of testing or other equipment may unavoidably cause some damage, the correction of which is not part of this AGREEMENT or any fully executed Amendments.
- 5. Buried Utilities:** The CONSULTANT and/or its authorized subconsultant will conduct the research that in its professional opinion is necessary with respect to the assumed locations of underground improvements. Such services by the CONSULTANT or its subconsultant will be performed in a manner consistent with the ordinary standard of care. The OWNER recognizes that the research may not identify all underground improvements and that the information upon which the CONSULTANT relies may contain errors or may not be complete. The OWNER agrees, to the fullest extent permitted by law, to waive all claims and causes of action against the CONSULTANT and anyone for whom the CONSULTANT may be legally liable, for damages to underground improvements resulting from subsurface penetration locations established by the CONSULTANT.
- 6. Timeliness:** The CONSULTANT will perform its services with due and reasonable diligence consistent with sound professional practices.
- 7. Delays:** The CONSULTANT is not responsible for delays caused by factors beyond the CONSULTANT's reasonable control. When such delays beyond the CONSULTANT's reasonable control occur, the CLIENT agrees that the CONSULTANT is not responsible for damages, nor shall the CONSULTANT be deemed to be in default of this AGREEMENT or fully executed Amendment.
- 8. Hidden Conditions:** A condition is hidden if it cannot be investigated by reasonable visual observation or records reviewed as customary in the performance of the services being rendered. If the CONSULTANT has reason to believe that such a condition may exist, the CONSULTANT shall notify the OWNER who shall authorize and pay for costs associated with the investigation of such a condition and, if necessary, costs necessary to correct said condition. If the OWNER fails to authorize such investigation or correction after due notification, or the

CONSULTANT has no reason to believe that such a condition exists, the OWNER is responsible for all risks associated with this condition, and the CONSULTANT shall not be responsible for the existing condition nor any resulting damages to persons or property.

- 9. Hazardous Materials:** Unless specifically agreed upon prior to the commencement of service, the CONSULTANT shall have no responsibility for the discovery, presence, handling, removal, disposal of, or exposure of persons to hazardous materials of any form.
- 10. Subconsultants:** The CONSULTANT may use the services of subconsultants when, in the CONSULTANT's sole opinion, it is appropriate and customary to do so.
- 11. Ownership of Documents:** All documents produced by the CONSULTANT under this AGREEMENT and any fully executed Amendment(s) shall remain the property of the CONSULTANT and will not be used by the OWNER for any other endeavor without the consent of the CONSULTANT. The OWNER has, and will retain the right to use the documents for all project purposes. The OWNER shall indemnify and hold harmless the CONSULTANT for any re-use, mis-use or alteration of said documents.
- 12. Additional Services:** Services not explicitly detailed in this AGREEMENT or fully executed Amendment(s) will not be provided without the OWNER's prior written authorization.
- 13. Unauthorized Changes:** In the event that the OWNER consents to, allows, authorizes, or approves of changes to any plans, specifications, or other documents, and these changes are not approved in writing by the CONSULTANT, the OWNER recognizes that such changes and results thereof are not the responsibility of the CONSULTANT. Therefore, the OWNER agrees to release the CONSULTANT from any liability arising from the construction, use, or result of such changes.
- 14. Code Compliance:** The CONSULTANT shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of the execution of this AGREEMENT and any fully executed Amendment(s). Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the CONSULTANT to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this AGREEMENT.
- 15. Information Provided by Others:** The OWNER shall furnish, at the OWNER's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT or any fully executed Amendment(s). The CONSULTANT may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

- 16. Opinions of Probable Cost:** In providing opinions of probable cost (formerly referred to as cost estimates), the Owner understands that the CONSULTANT has no control over the contractor's methods of pricing, or the cost of materials and labor, and that such opinions are provided on the basis of the CONSULTANT's experience and qualifications. The Consultant makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual cost.
- 17. Indemnifications:** The CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, to the extent caused by the CONSULTANT's negligent performance of professional services under this AGREEMENT and fully executed Amendment(s), and that of its sub-consultants or anyone for whom the CONSULTANT is legally liable. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and sub-consultants (collectively, CONSULTANT) against all damages, liabilities or costs, to the extent caused by the OWNER's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the OWNER is legally liable. Neither the OWNER nor the CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- 18. Professional Liability Insurance:** The CONSULTANT will maintain and provide evidence of Professional Liability Insurance in the amount not less than \$ 250,000 covering services to be provided under this Agreement and any duly executed Amendments.
- 19. Insurances:** Before commencing work on this contract the CONSULTANT will provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the CONSULTANT to maintain current certificates of insurance on file with the OWNER through the term of the contract.
- a. Workers Compensation: With respect to all operations performed, the CONSULTANT shall carry workers compensations insurance in accordance with the laws of the State Of Vermont.
 - b. General Liability and Property Damage: With respect to all operations under the contract, the CONSULTANT shall carry general liability insurance having all major divisions of coverage including, but not limited to:
 - Premises – Operations
 - Independent Contractor's Protective
 - Products and Completed Operations
 - Personal Injury Liability
 - Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:
\$ 1,000,000 per Occurrence

\$ 1,000,000 General Aggregate
\$ 1,000,000 Products/ Completed Product Aggregate
\$ 50,000 Fire Legal Liability

- c. **Automotive Liability:** The CONSULTANT shall carry automotive liability insurance covering all motor vehicles, no matter the ownership status, used in connection with the contract. Limit of coverage shall not be less than:
\$ 1,000,000 Combined Single Limit.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the CONSULTANT for the CONSULTANT's operations. These are solely minimums that have been set to protect the interests of the OWNER.

20. Dispute Resolution: Any claim or dispute between the OWNER and the CONSULTANT shall be negotiated in good faith for a period of 30 days from the date of written notice served by either party prior to exercising their rights under law.

21. Consequential Damages: Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the OWNER or the CONSULTANT, their employees, agents, subconsultants, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

22. Electronic Files: The OWNER acknowledges that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by CONSULTANT and electronic files, the signed or sealed hard-copy construction documents shall govern. In addition, the OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants, against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the CONSULTANT or from any reuse of the electronic files without the prior written consent of the CONSULTANT. Under no circumstances shall delivery of electronic files for use by the OWNER be deemed a sale by the CONSULTANT and the CONSULTANT makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. In no event shall the CONSULTANT be liable for indirect or consequential damages as a result of the OWNER's use or reuse of the electronic files. The CONSULTANT will provide upon request from the State of Vermont, electronic files relating to services performed under this Agreement. Record Drawings will be provided to the State in digital format (CD).

23. Severability: Any provision of this AGREEMENT and any fully executed Amendment(s) later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

- 24. Governing Law:** The OWNER and the CONSULTANT agree that all disputes arising out of or in any way connected to this Agreement and any fully executed Amendment(s), its validity, interpretation and performance, and remedies for breach of contract, or any other claims related thereof shall be governed by the laws of the State of Vermont.
- 25. Assignment:** Neither party to this AGREEMENT and any fully executed Amendment(s) shall transfer, sublet or assign any rights under or interest (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.
- 26. Job-Site Safety:** Neither the professional activities of the CONSULTANT, nor the presence of the CONSULTANT or its employees and subconsultants at a construction site, shall relieve the Construction Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending, or coordinating all portions of the work of construction in accordance with the contract documents, and any health or safety precautions required by any regulatory agencies. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or other entity, or their employees in connection with their work, or any health or safety precautions. The OWNER agrees that the Construction Contractor is solely responsible for job-site safety, and warrants that this intent shall be made evident in the OWNER's agreement with the Construction Contractor. The OWNER also agrees that the OWNER, the CONSULTANT, and the CONSULTANT's consultants shall be indemnified and shall be made additional insured under the Construction Contractor's general liability insurance policy.

END OF ATTACHMENT NO. 6