



State of Vermont  
Department of Environmental Conservation

Agency of Natural Resources

Facilities Engineering Division  
Laundry Building  
103 South Main Street  
Waterbury, VT 05671-0511

(802) 241-3737  
FAX (802) 244-4516

Charles Hafter, City Manager  
Authorized Representative  
City of South Burlington  
575 Dorset Street  
South Burlington, VT 05403

July 15, 2009

Corrected July 16, 2009. ARRA "Buy American" waiver contract award condition restored.

**Re: Approval of Contract Documents  
Airport Parkway, Wastewater Treatment Facility, Upgrade and Expansion Project**

USEPA Special Grant Number : XP-97139601-0 (FFY 2005, Town of Colchester)  
Vermont/ USEPA ARRA Clean Water Revolving Loan Number : AR1-067  
Vermont/ USEPA Non-ARRA Clean Water Revolving Loan Number : RF1-084

Dear Mr Hafter:

We are forwarding one set of the following plans and contract documents, as received at our office on **June 9, 2009**, and as issued by **Hoyle, Tanner & Associates, Inc.**, of Burlington, Vermont:

- Plans titled "*City of South Burlington, Vermont; Airport Parkway Wastewater Treatment Facility Upgrade and Expansion*", and dated May 12, 2009.
- Contract documents and specifications titled "*Specifications for Construction of Airport Parkway Wastewater Treatment Facility Upgrade, Contract No. 1, Prepared for City of South Burlington, Vermont*", and dated May 12, 2009.

The Department has determined that the project meets the requirements of the clean water revolving loan fund (CWSRF) Operating Agreement between the Department and the United States Environmental Protection Agency (USEPA), dated August 2, 1989. The Department hereby **approves the plans and specifications** for those purposes.

The plans and specifications have been stamped as approved by this office. It is requested that the approved set of plans and specifications be available at the project site at all times.



Charles Hafter, City Manager, Authorized Representative, City of South Burlington, Vermont  
Approval of Contract Documents  
Airport Parkway, Wastewater Treatment Facility, Upgrade and Expansion Project  
July 15, 2009

Corrected July 16, 2009. ARRA "Buy American" waiver contract award condition restored.

Any **revision** of the plans and contract documents must be accomplished by **addendum**, before bid opening, or by **change order**, after bid opening, and must be approved by this office.

You may **advertise** for bids, but the contract may not be **awarded** until authorization to do so has been given by this office. Such authorization cannot be given until **all** of the following items have been addressed and **all necessary funding** has been secured:

1. A copy of a Project Cost Summary.
2. Evidence of advertising for bids.
3. One copy of a tabulation of all bids that were received.
4. One copy of the Bid Proposal and Bid Bond of the bidder to whom you wish to award the Contract.
5. Engineer's letter of Contract Award Recommendation, including review of the DBE (disadvantaged business enterprises) solicitation efforts.
6. A letter signed by you, as the Authorized Representative of the Owner, indicating the name of the bidder to whom you wish to award the Contract.
7. Evidence that the Vermont Municipal Bond Bank has approved all necessary loan applications.
8. One copy of Attorney certificates of Rights-of-Way and Easements for construction of the Contract.
9. Letter from you requesting approval to award the Contract.
10. *Approval, by the U.S. Federal Aviation Administration, of the Contractor's "Notice of Proposed Construction", FAA Form 7460-1, for proposed structures and for use of a construction crane.*
11. *Approval, by the Vermont Department of Environmental Conservation, Water Quality Division, of the Contractor's application for project coverage under Vermont Construction General Permit 3-9020 (2006), for stormwater discharges from construction activities.*



Charles Hafter, City Manager, Authorized Representative, City of South Burlington, Vermont  
Approval of Contract Documents  
Airport Parkway, Wastewater Treatment Facility, Upgrade and Expansion Project  
July 15, 2009

Corrected July 16, 2009. ARRA "Buy American" waiver contract award condition restored.

12. *Issuance of all applicable construction permits required by the City of South Burlington.*
13. *Final responses, from the U.S. Environmental Protection Agency, to all of the City of South Burlington's requests for waivers from the "Buy American" requirements of the American Recovery and Reinvestment Act of 2009 (ARRA 2009). This contract award condition will not apply if the City declines ARRA funding.*

Before you may issue the Notice of Award, this office must review and approve the **DBE solicitation efforts**. The DBE effort is required for state revolving fund projects that have federal (USEPA) monies as a share of the total fund.

Any spare parts that are called for by the specifications must be parts that the manufacturer of the equipment states (in the operations and maintenance manual) must be replaced within the first year of operation of the equipment. No other spare parts will be considered eligible for the grant or loan. The Department reserves the right to determine eligibility of any spare parts that are procured under the Contract.

These plans and specifications are approved subject to the following provisions:

- A. [The Owner] *must incorporate in the specification a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition, unless the features are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment or to promote innovative technologies. The description shall include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.*
- B. [The Owner] *shall avoid the use of detailed product specifications if at all possible.*

Charles Hafter, City Manager, Authorized Representative, City of South Burlington, Vermont  
Approval of Contract Documents  
Airport Parkway, Wastewater Treatment Facility, Upgrade and Expansion Project  
July 15, 2009

Corrected July 16, 2009. ARRA "Buy American" waiver contract award condition restored.

- C. *When in the judgment of [the Owner] it is impractical or uneconomical to make a clear and accurate description of the technical requirements, [the Owner] may use a "brand name or equal" description as a means to define the performance or other salient requirements of a procurement. [The Owner] need not establish the existence of any source other than the named brand. [The Owner] must clearly state in the specification the salient requirements of the named brand which must be met by offerors.*
- D. *ARRA – Buy American Provisions - None of the funds provided may be used for the construction, alteration, maintenance, or repair of a public building or public work unless 1.) all of the iron, steel, and manufactured goods used in the project are produced in the United States or 2.) a waiver has been granted by the US Environmental Protection Agency (EPA). EPA's "Implementation of Buy American Provisions of P.L. 111-5, the "American Recovery and Reinvestment Act of 2009"" (including waivers) is included in an April 28, 2009 Memorandum from program Directors, James A. Hanlon and Cynthia C. Dougherty.*

It is also the Engineer's responsibility on Vermont/ USEPA assisted projects to advise suppliers and subcontractors of the reasons for rejection of materials and equipment. Rejection, if based on reported field operational problems, must be supportable on the basis of significant findings as opposed to one or two isolated failures or problems that are likely to occur in even the most reliable equipment. More concisely, it is the Engineer's responsibility to advise suppliers or subcontractors of the reasons for rejection, and it is also the Engineer's responsibility to ensure that the reasons for rejection are technically supportable based on actual field statistics.

In addition, if the City accepts a clean water revolving loan funded through the American Recovery and Reinvestment Act of 2009 (ARRA 2009), then the **Davis-Bacon** federal wage rate and "**Buy American**" requirements of ARRA will apply to the **entire contract**, even if ARRA funding is used for only a portion of the contract.

The Engineer's **construction** cost estimate dated April 22, 2009, is **attached**, with a septage grant eligibility column added by the Vermont Department of Environmental Conservation, Facilities Engineering Division, on July 15, 2009.



Charles Hafter, City Manager, Authorized Representative, City of South Burlington, Vermont  
Approval of Contract Documents  
Airport Parkway, Wastewater Treatment Facility, Upgrade and Expansion Project  
July 15, 2009

Corrected July 16, 2009. ARRA "Buy American" waiver contract award condition restored.

#### Non-ARRA Clean Water Revolving Loan Eligibility

The **entire** estimated **construction** cost, \$20,400,000 (rounded to nearest \$100,000), which includes contractor overhead and profit but excludes construction contingency, will be eligible for a **non-ARRA** clean water revolving loan, to the extent that construction occurs within Vermont or municipal rights-of-way, municipal land parcels or **permanent** municipal easements. Construction **contingency** will be eligible at the same percentages as construction cost before contingency.

The actual amount of a non-ARRA clean water revolving loan will be capped by South Burlington's \$21,800,000 Airport Parkway bond authorization, approved by South Burlington voters on March 4, 2008. The dollar amount in the approved bond article was based on total estimated project cost, less a \$2,000,000 commitment of South Burlington wastewater capital reserve funds, and less a committed (federal fiscal year 2005) special appropriation grant from USEPA to the Town of Colchester, which will be used by Colchester to pay South Burlington for its own share of the project capital cost.

In addition, the non-ARRA revolving loan may be further reduced by other grants and loans, or by actual audited project cost.

#### ARRA Clean Water Revolving Loan Eligibility

If South Burlington is determined to meet the "**Buy American**" requirements and all other applicable ARRA requirements, then the **entire** estimated **construction** cost will be eligible for an **ARRA** clean water revolving loan, to the extent that construction occurs within Vermont or municipal rights-of-way, municipal land parcels or **permanent** municipal easements.

The actual amount of any **ARRA** revolving loan to South Burlington will be **capped at \$2,000,000**, in accordance with the Vermont Clean Water Intended Use Plan, ARRA 2009 Funds, dated April 15, 2009. Any ARRA loan funds will be applied first to "**green**" project elements. Non-ARRA revolving loan funding will be reduced by the amount of any ARRA revolving loan funding.