

**FINANCE AND MAINTENANCE AGREEMENT
BETWEEN
STATE OF VERMONT
AND
TOWN OF MIDDLEBURY
FOR
MIDDLEBURY STP PC20(3)
MIDDLEBURY NH PC20(4)**

Contract Number: FM0402

THIS AGREEMENT is made by and between the State of Vermont, acting through its Agency of Transportation, with its principal office at Barre City Place, 219 North Main Street, Barre, Vermont (the “STATE”) and the **Town of Middlebury**, with its principal office located at **1020 S. US 7 Middlebury, VT 05753** (the “MUNICIPALITY”).

W I T N E S S E T H:

WHEREAS, the STATE proposes to submit to the Federal Highway Administration, United States Department of Transportation, federal-aid projects known as **Middlebury STP PC20(3) and Middlebury NH PC20(4)** (the “Project”), which will provide improvements at the locations described as follows:

Project Location: STP PC20(3) – In the Town of Middlebury, **beginning on VT 30 at Sta. 27+65 (MM 0.524) and continuing north on VT 30 to Sta. 88+16 (MM 1.146) at the end of project.** NH PC20(4) – In the Town of Middlebury, **beginning on VT 125 at Sta. 17+60 (MM 0.333) and continuing east on VT 125 to Sta. 63+96 (MM 1.211) at the end of project; including VT 125 west between Sta. 100+00 and Sta. 105+50.**

Work (“the Work”) to be performed under this Project includes: **Coarse-milling, resurfacing with leveling and wearing course, pavement markings, signage, and other related highway items;** and

WHEREAS, the MUNICIPALITY desires the improvements as described above; and

WHEREAS, following completion of the Project, the MUNICIPALITY shall be responsible for **the maintenance of the completed project and all infrastructure owned by the MUNICIPALITY** in a manner satisfactory to the STATE; and

WHEREAS, the MUNICIPALITY further desires that the STATE act, insofar as necessary, for the MUNICIPALITY in the preparation of plans and the construction of the Project;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. Allocation of Funds to Project. That all costs of the Project, except those which are non-participating, shall be paid with **eighty-one and 08/100 percent (81.08%) federal funds and eighteen and 92/100 percent (18.92%) state funds (MUNICIPALITY: 0.00%; STATE: 18.92%; Federal: 81.08%)**. For purposes of this Agreement:

- a. "Participating Project Cost" means items which the STATE and the Federal Highway Administration find necessary to accomplish the purpose of the Project and for which they will participate in funding and are deemed eligible under applicable laws and the regulations of the Federal Highway Administration.
- b. "Non-participating Project Cost" means items which the STATE and the Federal Highway Administration find unnecessary to accomplish the purpose of the Project and are deemed not eligible under applicable laws and the regulations of the Federal Highway Administration.

Determination of participation will be on the basis of the STATE's and the Federal Highway Administration's evaluation of items as they are presented.

2. Technical and Other Assistance from State. The STATE will provide MUNICIPALITY with the necessary engineering assistance to design and construct the Project, keep all accounting records, and make all payments to contractors hired by the STATE for the Project.

3. State/Municipal Cooperation. The Project will be constructed by contract under the supervision of the STATE or its duly authorized representative. The STATE and MUNICIPALITY will cooperate to advance the Project. The STATE will submit design plans and cost estimates to the MUNICIPALITY as the Project reaches the stages of Conceptual Plans, Preliminary Plans, and Final Plans. The Project will not advance to the next step until the MUNICIPALITY has given its written approval to the current step plans.

4. Use of Municipal Facilities. During the period of construction of the Project, the MUNICIPALITY will grant the STATE and/or the STATE's authorized representative the following:

- a. Temporary use for Project purposes of lands within the limits of MUNICIPALITY'S highways, as well as other lands owned by the MUNICIPALITY that are identified as needed for the project;
- b. Use of municipal highways for trucking and hauling, as may be required without payment of any permit or other user fee to the MUNICIPALITY; and
- c. Authority to sign the Project construction site as necessary to provide information and warning to the public.

5. Participation in Payments of Damages to Abutters. The MUNICIPALITY shall pay 0% of participating cost liability for any incidental damages that may occur due to participating project items, as specified in Section 1(a) above, to abutting or adjacent property owners or occupants due to the improvement, widening or relocation of right-of-way.

The MUNICIPALITY shall pay 100% of non-participating cost liability for any incidental damages that may occur due to non-participating project items, as specified in Section 1(a) above, to abutting or adjacent property owners or occupants due to the improvement, widening or relocation of right-of-way.

6. Control of Right-of-Way. The MUNICIPALITY will not permit, now or hereafter, any installation of utilities or other work within the rights-of-way now controlled or acquired in connection with the Project until the MUNICIPALITY'S legislative body has approved detailed plans showing the proposed work and issued a permit, all in accordance with 19 V.S.A. Section 1111. Before issuing a permit, the MUNICIPALITY will review any proposed utility installation for conformance with the current Utility Accommodation Policy of the Vermont Agency of Transportation.

7. Encroachments. Except for utilities authorized by law to occupy highway rights of way, the MUNICIPALITY will not sell, lease or permit any non-highway use or encroachments on the rights-of-way to be controlled and/or acquired in connection with the Project without first obtaining the written permission of the STATE.

8. Acquisition of Additional Right-of-Way.

- a. **TECHNICAL ASSISTANCE FROM STATE.** Should construction of this project require the acquisition of lands or rights outside existing highway rights of way, the STATE will assist the MUNICIPALITY in acquiring such lands or rights in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894, as amended, and the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. No. 100-17, 101 Stat. 246-256, as amended, provided that the lands or rights can be acquired by agreement at fair market value, and with the understanding that if condemnation is necessary the MUNICIPALITY must be the condemning authority, as hereinafter provided.
- b. **RECORD KEEPING AND REPORTS.** In accordance with 49 C.F.R. §24.9 (Recordkeeping and Reports) the MUNICIPALITY will maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment.
- c. **ACQUISITION IN NAME OF MUNICIPALITY.** The STATE will perform right of way work for the Project and, as agent for the MUNICIPALITY, will assist the MUNICIPALITY with negotiating purchase of lands or rights required for this Project. Title to all lands or rights acquired for the Project shall vest in the MUNICIPALITY immediately upon acquisition.

- d. **USE OF MUNICIPAL EMINENT DOMAIN POWERS.** If any of the lands or rights needed for the Project cannot be acquired by negotiation, it is agreed and understood that the MUNICIPALITY will exercise its eminent domain powers. The MUNICIPALITY agrees to make every reasonable effort to condemn at the fair market value price, as determined by the STATE'S reviewing appraiser, but may condemn at a price which exceeds the approved fair market value price if facts set forth at a hearing warrant a higher award. The STATE reserves the right to approve or disapprove the portion of such an award that is in excess of the fair market value determined by the STATE'S reviewing appraiser. If the MUNICIPALITY makes an award higher than the fair market value price determined by the STATE'S reviewing appraiser without the prior written approval of the STATE, MUNICIPALITY may be required to bear the entire cost of the excess amount over the STATE'S approved fair market value price.

If condemnation becomes necessary, the MUNICIPALITY will commence condemnation proceedings within 30 days upon receipt of notice from the STATE that condemnation is required.

- e. **USE OF PRIVATE LEGAL COUNSEL.** Before authorizing any private lawyer or law firm to begin any legal work involving condemnation of lands or rights needed for the Project, the MUNICIPALITY shall enter into a contract for legal services with the lawyer or law firm. The contract must be approved by the STATE and the Federal Highway Administration and, to ensure the maximum participation of federal-aid funds, shall include the following:
- i. A recital of the qualifications and experience of the lawyer or law firm in areas of property law.
 - ii. A requirement that all legal work must be performed in accordance with Vermont laws and 23 CFR § 710.309 (Acquisition) and 49 CFR Part 24 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs).
 - iii. The estimated cost of legal services on a lump sum or hourly rate, including a breakdown that specifies salaries, costs of materials and any other direct or indirect costs. No legal work shall be commenced which will exceed the lump sum estimate without first obtaining the approval of the STATE and the Federal Highway Administration. Failure to obtain such approval may result in the MUNICIPALITY's bearing the entire cost of such excess.
- f. **USE OF STAFF COUNSEL.** The MUNICIPALITY may choose to be represented by a lawyer who is a municipal official or employee. However, in such event compliance with 23 C.F.R. § 710.203 (Funding and Reimbursement) by the MUNICIPALITY is a prerequisite to reimbursement of otherwise eligible legal expenses.
- g. **APPROVAL OF LEGAL REPRESENTATION IN OTHER PROJECT-RELATED MATTERS.** The MUNICIPALITY may be denied reimbursement for costs of legal representation for Project-related matters other than preparation for and trial of condemnation cases unless it has secured the prior approval of the STATE and the Federal Highway Administration. Matters in this category include, but are not limited to, Act 250.

- h. **REIMBURSEMENT OF APPROVED LEGAL COSTS.** Legal costs incurred by the MUNICIPALITY that are eligible for federal participation shall be included in the right of way costs of the Project. Reimbursement to the MUNICIPALITY of its share of these costs by the STATE, upon receipt of properly itemized invoices, shall be in accordance with the cost distribution as hereinafter set forth. Payment for these legal costs shall be in accordance with the cost principles established by Parts 1-15 of the Federal Procurement Regulations and/or Federal Highway Administration policies. The MUNICIPALITY must comply with these federal cost principles to assure maximization of federal participation in these costs.
- i. **NOTIFICATION AS TO COURT APPEALS.** At the expiration of the period during which an affected party can seek judicial review of condemnation awards made by the MUNICIPALITY, the MUNICIPALITY shall send written notification to the STATE either setting forth the names of the appealing landowners or attesting to the fact that no appeals have been taken.
- j. **WARRANTY AS TO ADEQUACY OF MUNICIPAL RIGHTS OF WAY.** The MUNICIPALITY agrees to save harmless and indemnify the STATE, its officers, agents and employees, from all suits, actions or claims for damages sustained by abutting or adjacent property owners or occupants because of the inadequacy of the rights of way furnished the Project by the MUNICIPALITY.
- k. **ADDITIONAL INFORMATION.** Upon request, the STATE will furnish the MUNICIPALITY a copy of more detailed information regarding the MUNICIPALITY'S responsibilities under this Right of Way Agreement.

9. Maintenance of Traffic Control Devices and Street Lights. All new, permanent signs (including parking regulatory signs), street lights, traffic signals and pavement markings shown on the Project plans will be installed by the contractor and thereafter maintained in place by the MUNICIPALITY at no cost to the STATE, including cost to provide electrical power, all in conformance with 23 V.S.A. Section 1025 and the latest edition of the Federal Highway Administration's *Manual on Uniform Traffic Control Devices (MUTCD)* and its latest revisions. Once constructed, no changes shall be made to the parking and/or traffic control features by the MUNICIPALITY without the prior written approval of the STATE and the Federal Highway Administration.

10. Relocation of Privately-Owned Utilities. The STATE will perform liaison and negotiation with utility companies, as necessary to relocate all privately-owned utilities that are in conflict with the Project. The MUNICIPALITY will cooperate with the STATE and utility companies in the timely relocation of privately-owned utility facilities that are in conflict with the Project.

11. Relocation of Municipal Utilities. The MUNICIPALITY will cooperate with the STATE and take such steps as may be necessary to accomplish the timely relocation of all utility facilities owned by the MUNICIPALITY that are in conflict with the Project. Any approved cost sharing shall occur as provided in a separate Utility Agreement to be entered into between the MUNICIPALITY and STATE.

The cost of utility relocation work accomplished by the contractor for the MUNICIPALITY and designated as "non-participating" shall be the sole responsibility of the MUNICIPALITY. The STATE may bill the MUNICIPALITY on a monthly basis, as work is completed, and the MUNICIPALITY shall reimburse the STATE in full within thirty (30) days of receipt of each such bill.

12. Municipal Responsibility for Certain Requests for Change Orders, Design Changes, or Supplemental Agreements. The MUNICIPALITY will pay its proportionate share (100%) for additional costs resulting from MUNICIPALITY requests for change orders, design changes, or supplemental agreement where such requests are made after contract award. Examples of such changes include but are not limited to upgrading crosswalks to inlaid colored pavement, night work limitations, etc.

13. Traffic Control; Detours. During construction of the Project, the MUNICIPALITY will render such assistance as the STATE may request in the maintenance of traffic. If the Project route is closed to through traffic, the MUNICIPALITY will be responsible for selecting, signing, and maintaining a detour route at no cost to the STATE, which shall be accomplished in conformance with 23 V.S.A. Section 1025 and the latest edition of the Federal Highway Administration's *Manual on Uniform Traffic Control Devices (MUTCD)*.

14. Maintenance of Roadways During Winter Suspension of Project Work. If construction of the Project is temporarily suspended for the winter season, the MUNICIPALITY will provide winter maintenance of roadways in the Project area, all in conformance with the provisions of the applicable edition of the Vermont Agency of Transportation's *Standard Specifications for Construction*, until construction operations resume in the spring.

15. Project Plans; Conformance to Applicable State and Federal Laws, Regulations and Construction Standards. The Project will be constructed as the STATE, in cooperation with the Federal Highway Administration (FHWA), may determine, all as detailed in the Project plans. Construction of the Project will conform to applicable FHWA rules and regulations and to the applicable edition of the Vermont Agency of Transportation's *Standard Specifications for Construction*, as well as special provisions that may be included in the Project's contract agreement.

16. Permits; Compliance with Permit Conditions. The MUNICIPALITY will be the applicant for any permits required for the Project and will adhere to all permit conditions. The MUNICIPALITY authorizes the STATE to apply for permits in the name of the MUNICIPALITY.

17. Municipal Share; Invoices; Payment. The MUNICIPALITY will reimburse the STATE for one hundred percent (100%) of all non-participating Project costs and for **zero percent (0%)** of total participating Project costs, inclusive of preliminary engineering, right-of-way, utility costs where applicable, and the participating final construction costs. The MUNICIPALITY acknowledges that underruns or overruns in item quantities during construction, as well as change orders during construction, may increase or decrease quantities, thereby causing the total cost of construction to differ from the amount of the accepted bid.

The MUNICIPALITY will pay its proportionate share to the STATE, on the basis of monthly progress billings received from the STATE.

18. Cancellation or Default by State. If, due to the failure of the STATE, the Project is not constructed, then all costs incurred shall be borne in full by the STATE.

19. Cancellation or Default by Municipality. If at any time prior to award of a construction contract, the MUNICIPALITY no longer desires the Project, then the Project may be canceled subject to the following conditions:

- a. **If the MUNICIPALITY does not approve the Conceptual Plans, the Project will be canceled, and the STATE shall reimburse the MUNICIPALITY for one hundred percent (100%) of all costs incurred by the MUNICIPALITY.**
- b. **If Conceptual Plans have been approved by the MUNICIPALITY and subsequent cost estimates (Preliminary Plans, Final Plans, or Low Bid) exceed the Conceptual Plans estimate by fifty percent (50%) or more, the MUNICIPALITY may request cancellation of the Project and shall be liable for its proportionate share of the total costs incurred to date, as specified in Section 1 above.**
- c. **If Conceptual Plans have been approved by the MUNICIPALITY and cost estimates have not increased more than that specified in Section 19(b), above, the MUNICIPALITY may request cancellation of the Project, subject to payment by the MUNICIPALITY to the STATE for one hundred percent (100%) of all costs incurred to the date of the request.**
- d. **Should the project be cancelled by the MUNICIPALITY or otherwise not advance to construction because of any act or omission of the MUNICIPALITY including not exercising its eminent domain powers, then the MUNICIPALITY will reimburse the STATE in full for one hundred percent (100%) of all costs incurred to date for the Project.**

20. Cancellation of Project Because of Circumstances Beyond Either Party's Control. If, due to circumstances beyond the control of the STATE or the MUNICIPALITY, the Project is not constructed, then all costs incurred shall be shared as specified in Section 1 above.

21. Hazardous Material Contamination. The cost of handling, treatment and disposal of petroleum-contaminated soils or other hazardous material contamination in existence prior to construction of the Project shall be non-participating. Accordingly, any costs associated therewith shall be the sole responsibility of the MUNICIPALITY. Hazardous material generated during the construction of the project shall be disposed of as provided for in the project specifications and shall be a participating cost.

22. Maintenance of Project Improvements. The MUNICIPALITY agrees that if the Project is approved, constructed, and accepted by the STATE, then the MUNICIPALITY will maintain the Project in a manner satisfactory to the Agency of Transportation or its authorized representatives and make ample provisions each year for such maintenance. In this regard, the MUNICIPALITY acknowledges that its attention has been directed to the provisions of 19 V.S.A. Sections 304 (duties of selectboards) and 310 (highways, bridges and trails).

23. Interpretation of Agreement. If an ambiguity or question of intent arises with respect to any provision of this Agreement, the Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Agreement.

24. Section Headings. The section headings contained in this Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

25. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

26. Incorporations by Reference. The following attachment(s) are incorporated to and made a part of this Agreement:

Attachment C: Standard State Provisions for Contracts and Grants (Revised December 15, 2017)

IN WITNESS WHEREOF, the State of Vermont has caused its name to be subscribed this _____ day of _____, 20____, by Joe Flynn, its Secretary of Transportation and duly authorized agent.

**STATE OF VERMONT
AGENCY OF TRANSPORTATION**

By: _____
Joe Flynn,
Its Secretary of Transportation and
Duly Authorized Agent

STATE OF VERMONT)
WASHINGTON COUNTY, SS.)

At Barre City, this _____ day of _____, 20____, personally appeared Joe Flynn and acknowledged the foregoing instrument, by him/her as Secretary of Transportation and duly authorized agent of the **STATE OF VERMONT** subscribed, to be his/her free act and deed and the free act and deed of the **STATE OF VERMONT**.

Before me,

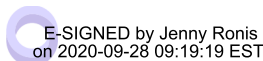
Signature of Notary Public

Type or print name of Notary Public

Commission No. _____
(My commission expires Jan. 31, 2021)

APPROVED AS TO FORM:

DATED: September 28, 2020



ASSISTANT ATTORNEY GENERAL

IN WITNESS WHEREOF, the **Town of Middlebury** has caused its name to be subscribed this

_____ day of _____, 20____, by _____

its _____ and duly authorized agent(s)

TOWN OF MIDDLEBURY

By: _____

Name

Title
and Its Duly Authorized Agent(s)

STATE OF VERMONT)

ADDISON COUNTY, SS.)

At _____, this _____ day of _____, 20____,
personally appeared _____,
Name Title

and acknowledged the foregoing instrument, by him/her/them as duly authorized agent(s) of the **Town of Middlebury** subscribed, to be his/her/their free act and deed and the free act and deed of the **Town of Middlebury**.

Before me,

Signature of Notary Public

Type or print name of Notary Public

Commission No. _____
(My commission expires Jan. 31, 2021)

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

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 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or

acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party’s principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State’s debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.

C. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. **Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required. For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
- B. **Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. **Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. **Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. **Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

General Insurance Requirements
Attachment C – State Standard Provisions for Contracts and Grants
Revised December 15, 2017

Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

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 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

Certificate Holder:

State of Vermont
Agency of Transportation
219 North Main Street
Suite 105
Barre VT 05641

VERMONT LEAGUE OF CITIES & TOWNS



Issue Date: 04/08/2019

Policy Number: [REDACTED]

CERTIFICATE OF COVERAGE

Company Affording Coverage

Named Member

[REDACTED]

VLCT Property & Casualty Intermunicipal Fund, Inc.
89 Main Street Suite 4
Montpelier, VT 05602

Type of Coverage	Term	Limits of Liability
Commercial General Liability Coverage Includes: Premises/Operations Products/Completed Operations Personal Injury Contractual Independent Contractors Broad-Form Property Damage	01/01/2019 - 01/01/2020	\$10,000,000 Per Occurrence
Automobile Liability Any Auto Hired Autos Non-Owned Autos Comprehensive/Collision	01/01/2019 - 01/01/2020	\$10,000,000 Per Occurrence ACV
Workers Compensation And Employers Liability	01/01/2019 - 01/01/2020	Statutory \$5,000,000 Per Occurrence and in the Aggregate
Property	01/01/2019 - 01/01/2020	\$20,000,000 Per Occurrence
Other: The State of Vermont and its agencies, departments, officers and employees are included as an additional covered party (additional insured) for Automobile Liability, General Liability and Property Damage, but only in respect to operations by or on behalf of the Named Member, as respects the grant. Coverage shall be primary and noncontributory with any other insurance, when required by contract.		
Certificate Holder: State of Vermont Agency of Transportation Contract Administration 219 North Main Street, Suite 105 Barre, VT 05641	This Certificate is issued as a matter of information only and confers no rights upon the Certificate Holder. This Certificate does not amend, extend or alter the coverage afforded by the policies above. Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 days written notice to the Certificate Holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents, or representatives.	

Authorized Representative: [REDACTED]