

**STATE OF VERMONT GRANT AGREEMENT**

**Part 1 - Grant Award Detail**

**SECTION I - GENERAL GRANT INFORMATION**

<sup>1</sup> Grant #: 07110-DTF-2019-001		<sup>2</sup> Original <input type="checkbox"/> Amendment # <input checked="" type="checkbox"/>	
<sup>3</sup> Grant Title: Rail Platform Parking and Amenities			
<sup>4</sup> Amount Previously Awarded: \$ 100,000.00		<sup>5</sup> Amount Awarded This Action: \$ 0.00	<sup>6</sup> Total Award Amount: \$ 100,000.00
<sup>7</sup> Award Start Date: 4/22/2019		<sup>8</sup> Award End Date: 1/22/2022	<sup>9</sup> Subrecipient Award: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<sup>10</sup> Vendor #: 39947	<sup>11</sup> Grantee Name: Town of Middlebury		
<sup>12</sup> Grantee Address: 77 Main Street			
<sup>13</sup> City: Middlebury		<sup>14</sup> State: VT	<sup>15</sup> Zip Code: 05753
<sup>16</sup> State Granting Agency: Agency of Commerce and Community Development			<sup>17</sup> Business Unit: 07110
<sup>18</sup> Performance Measures: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	<sup>19</sup> Match/In-Kind: \$ 100,000.00	Description: 50/50 match required (cash or in-kind)	
<sup>20</sup> If this action is an amendment, the following is amended: Amount: <input type="checkbox"/> Funding Allocation: <input type="checkbox"/> Performance Period: <input checked="" type="checkbox"/> Scope of Work: <input type="checkbox"/> Other: <input type="checkbox"/>			

**SECTION II - SUBRECIPIENT AWARD INFORMATION**

<sup>21</sup> Grantee DUNS #: 026135772		<sup>22</sup> Indirect Rate: <u>n/a</u> % (Approved rate or de minimis 10%)	<sup>23</sup> FFATA: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<sup>24</sup> Grantee Fiscal Year End Month (MM format): 06		<sup>25</sup> R&D: n/a	
<sup>26</sup> DUNS Registered Name (if different than VISION Vendor Name in Box 11):			

**SECTION III - FUNDING ALLOCATION**

**STATE FUNDS**

Fund Type	<sup>27</sup> Awarded Previously	<sup>28</sup> Award This Action	<sup>29</sup> Cumulative Award	<sup>30</sup> Special & Other Fund Descriptions
General Fund	\$0.00	\$0.00	\$0.00	
Special Fund	\$100,000	\$0.00	\$100,000	Downtown Transportation Fund Grant
Global Commitment (non-subrecipient funds)	\$0.00	\$0.00	\$0.00	
Other State Funds	\$0.00	\$0.00	\$0.00	

**FEDERAL FUNDS**

(includes subrecipient Global Commitment funds)

**Required Federal Award Information**

<sup>31</sup> CFDA #	<sup>32</sup> Program Title	<sup>33</sup> Awarded Previously	<sup>34</sup> Award This Action	<sup>35</sup> Cumulative Award	<sup>36</sup> FAIN	<sup>37</sup> Federal Award Date	<sup>38</sup> Total Federal Award
		\$0.00	\$0.00	\$0.00			\$0.00
<sup>39</sup> Federal Awarding Agency:		<sup>40</sup> Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
<b>Total Awarded - All Funds</b>		<b>\$100,000</b>	<b>\$0.00</b>	<b>\$100,000</b>			

**SECTION IV - CONTACT INFORMATION**

<b>STATE GRANTING AGENCY</b>		<b>GRANTEE</b>	
NAME: Jennifer Lavoie		NAME: Kathleen Ramsay	
TITLE: Grant Specialist		TITLE: Town Manager	
PHONE: 802-828-1948		PHONE: 802-388-8100	
EMAIL: Jennifer.lavoie@vermont.gov		EMAIL: kramsay@townofmiddlebury.org	

**FIRST AMENDMENT  
TO GRANT AGREEMENT**

This First Amendment to the Grant Agreement is entered into by **the State of Vermont, Agency of Commerce and Community Development (the "Agency")** and **the Town of Middlebury, Vermont (the "Grantee")**.

**WHEREAS**, the Agency and the Grantee entered into Grant Agreement 07110-DTF-2019-001, dated January 28, 2020, (the "Grant Agreement"); and

**WHEREAS**, the Completion Date of the Agreement was October 22, 2021; and

**WHEREAS**, due to circumstances beyond the Grantee's reasonable control and notwithstanding the Grantee's diligence in pursuing this project, the Grantee requires additional time to complete the activities authorized under the Agreement and has requested that the project performance period be altered.

**NOW, THEREFORE**, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the Grant Agreement is modified as follows:

A. In Part 1: Grant Award Detail:

Change award end date from October 22, 2021, to January 22, 2022.

B. In Attachment A, #3 Project Schedule:

Change completed date from October 22, 2021, which is 30 months from the award date, to January 22, 2022, which is 33 months from the award date.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS GRANT AGREEMENT.

By the State of Vermont:

By the Grantee:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Alex Farrell, Deputy Commissioner  
Department of Housing and Community Development

Name: Kathleen Ramsay  
Town of Middlebury

**ATTACHMENT A**  
**Scope of Work to be Performed**

1. **Project Description:** The Grantee shall use the Grant Funds in compliance with all of the terms and conditions of this Agreement to complete the following “Project:”

The proposed project will create parking and amenities intended to serve a new rail platform and other parking needs in Downtown Middlebury. The project represents the Town's share of tasks that are being shared with VTrans to develop a rail platform on a previously undeveloped town parcel in our Downtown. Design and construction of the platform itself, including all work within the railroad right-of-way, will be performed by VTrans using funding from a (Federal) TIGER grant. This past year, as part of a Location Study and public process, the Town worked with VTrans project manager Paul Libby and Dir. of the VTrans Aviation & Rail Program Dan Delabruere as the community selected a location for the platform. VTrans provided the guidance that any work beyond the rail platform and outside of the rail right-of-way, including parking, access and other amenities, are not eligible costs under the TIGER Grant program. As such, these must be designed and constructed by the Town at the Town's expense. We are seeking funding from Downtown Transportation Fund to help cover these costs in order to complete the platform project, making the publicly supported vision of passenger rail service in Downtown Middlebury a reality. The proposed scope of work includes parking for 17 vehicles, an Amtrak-compliant ADA access/ramp leading from new ADA parking spaces to the platform entrance, approx. 500lf of new sidewalk connecting the platform to the existing sidewalk network on Seymour Street, 3 historic street lights, 2 benches, bike racks, signage, a catch basin and piping connecting the new impervious surface to our stormwater system, removal of existing small trees and brush and site restoration including grass, trees and landscaping.

2. **Project Budget:**

<b>Item Description</b>	<b>Unit Cost</b>	<b>Quantity</b>	<b>Total Cost</b>
Asphalt Parking Lot - 17 spaces	\$5,000	17	\$85,000
New 5ft sidewalk with curb - 500lf	\$110	500	\$55,000
Historic streetlights with conduit and controllers	\$7,000	3	\$21,000
Benches	\$2,500	2	\$5,000
Bike Racks	\$500	2	\$1,000
Signage	\$2,500	1	\$2,500
Storm sewer- new catchbasin and connecting piping	\$3,000	1	\$3,000
Clearing and removal of trees and brush	\$6,000	1	\$6,000
Grass restoration, landscaping and trees	\$8,000	1	\$8,000
15% Engineering, Inspection and Permitting		1	\$27,975
8% Mobilization/Demobilization		1	\$14,920
<b>Subtotal</b>			<b>\$229,395</b>
10% Contingency			\$18,650
<b>Total</b>			<b>\$248,045</b>

**Funding Sources:**

<b>Source</b>	<b>Amount</b>
Downtown Transportation Fund Grant	\$100,000
Town Capital Improvement Budget	\$148,045
<b>Total</b>	<b>\$248,045</b>

3. **Project Schedule:** Construction of the Project must begin on or before October 22, 2020, which is 18 months from the award date (“Commencement Date”) and be completed on or before January 22,

2022, which is 33 months from the award date (“Completion Date”). In the event the Grantee cannot comply with either of these dates, the Grantee must request an amendment from the Agency in writing at least three months prior to the date’s occurrence. Failure to comply with these dates may result in the forfeiture of the Grant Funds.

(END OF ATTACHMENT A)

## **ATTACHMENT B PAYMENT PROVISIONS**

- 1. Maximum Amount:** In consideration of the Grantee's completion of the Project in accordance with the terms and conditions of this Agreement, the Agency agrees to reimburse the Grantee, in accordance with the Payment Provisions specified in Attachment B, a sum not to exceed \$100,000.00 or 50% of the Total Project Cost, whichever is less. The Total Project Cost is estimated to be \$248,045.00.
  
- 2. Distribution of Grant Funds:** The Agency shall make two payments to the Grantee in the form of reimbursements as follows:
  - (A) The first payment shall be in an amount equal to 50% of the Award Amount. The first payment shall be made after Project expenditures have reached 50% of the Total Project Cost and the Interim Report has been submitted.
  - (B) The second and final payment shall be the remaining 50% of the Award Amount or an amount such that the total of the two payments equals 50% of the Total Project Cost, whichever is less. The second payment shall be made after completion of the Project and submission of the Final Report.
  - (C) Each reimbursement shall be made by the Agency only upon the Agency's receipt, review, and approval of the following information:
    - (i) For the first reimbursement, an Interim Report containing:
      - (a) A written narrative describing in detail the Project work completed to date, any challenges and modifications to the Project, and how you plan to complete activities by the end of the grant period (minimum 150 words);
      - (b) A detailed budget report listing all income and expenses for Project-related activities;
      - (c) Copies of invoices and receipts for all Project expenditures. Invoices should demonstrate that Project expenditures have reached 50% of the Total Project Cost;
      - (d) A notarized statement from the Grantee's signatory on this Agreement certifying that the contents of the report are true and accurate; and
      - (e) An invoice including the total award amount, amount requested for reimbursement (rounded to whole dollar amount) municipality name, address, grant name, grant number, and date.
    - (ii) For the second and final reimbursement, a Final Report, submitted no later than 30 days after the Completion Date, containing:
      - (a) A written narrative including the date of completion and describing in detail the Project work completed and any challenges and modifications to the Project (minimum 150 words);
      - (b) A detailed budget report listing all income and expenses for Project-related activities and demonstrating that project expenditures have reached 100% of the Total Project Cost;
      - (c) Copies of invoices, receipts and canceled checks for all Project expenditures. Invoices should demonstrate that grant work was completed within the grant period and canceled checks should demonstrate that all invoices have been paid by the municipality. If staff time is offered as part of the required match, the number of hours and hourly rate of each employee must be documented;
      - (d) A notarized statement from the Grantee's signatory on this Agreement certifying that the contents of the report are true and accurate;
      - (e) An invoice including the total award amount, amount requested for reimbursement (rounded to whole dollar amount) municipality name, address, grant name, grant number, and date; and
      - (f) Photographs of all of the completed Project elements described in the Project description contained in Attachment A. Photographs must be in color and submitted electronically.
      - (g) A completed grantee survey.

- 3. Closeout Procedures:** The Agency shall withhold the final payment of the Grant funds until the Agency has approved the Grantee's Final Report, demonstrating that Grantee has completed the Project in accordance with this Agreement. The Final Report must be submitted no later than 30 days after the Completion Date.

[END OF ATTACHMENT B]

**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 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)

**ATTACHMENT D  
OTHER GRANT AGREEMENT PROVISIONS**

**1. Subject Matter And Source Of Funds**

The grant which is the subject of this Agreement (the "Grant") is funded by the Downtown Transportation and Related Capital Improvement Fund established under the Vermont Downtown Development Act, 24 V.S.A. chapter 76A (the "Act"). The Act allows the Vermont Downtown Development Board (the "Board") to award grants to municipalities with designated downtowns pursuant to the Act to fund downtown capital transportation and related improvement projects to support economic development. The Board, in accordance with the Act, has awarded the Grant for the purpose of supporting the activities described in this Agreement.

**2. Historic Preservation Review**

The Grantee shall not commence construction nor allow commencement of construction until all Project plans have been approved by the Vermont Division for Historic Preservation. Grantee shall construct the Project in accordance with the approved project plans. Any conditions to avoid adverse impact on any historic or archeological resources shall be met, as set forth by letter to Grantee from the Division for Historic Preservation on behalf of the Vermont Advisory Council for Historic Preservation. Any changes to the Project plans must be approved in advance by the Division of Historic Preservation.

**3. Procurement Procedures**

The Grantee shall employ an open and competitive process for the solicitation of bids and the selection of contractors for the performance of any Grant-assisted work. This Agreement shall in no way be construed to relieve the Grantee of contractual obligations outside of this Agreement. The Grantee shall be responsible, in accordance with good administrative practices and sound business judgment, for the settlement of any contractual or other issues arising out of procurement arrangements related to the Project.

**4. Conflict Of Interest**

(A) No member of the legislative body of the Grantee, officers or employees of the Grantee, or their respective designees, or agents, shall participate in the selection of a contractor or in the award or administration of a contract supported by the Grant funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise, but not be limited to, circumstances where one of the following persons has a financial or other interest in the award:

- (i) an elected official, employee, officer or agent of the Grantee;
- (ii) an immediate family member of an elected official, employee, officer or agent of the Grantee;
- (iii) a person with whom any elected official, employee, officer or agent of the Grantee has business ties; or
- (iv) an organization that employs or is about to employ any of the above.

(B) The Grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements.

(C) Grantee may adopt procedures that set reasonable standards of conduct where the financial interest is insubstantial, or the gift is an unsolicited item of nominal intrinsic value.

**5. Bank Accounts For Grant Funds**

Grantee shall maintain Grant funds in a depository account or accounts under the control of the treasurer for the Grantee with an institution or institutions authorized to take deposits in the State of Vermont. Grant funds shall be paid out only on orders drawn by officials authorized to draw such orders. All Grant funds held in such accounts shall be fully insured by the Federal Deposit Insurance Corporation or its equivalent. Any balance exceeding such coverage shall be secured by U.S. Government obligations. All individuals who are authorized to deposit receipts and/or pay out funds from any of the accounts covered by this Subsection shall have fidelity bond coverage in an amount commensurate with any losses that might be incurred.

**6. Financial Management**

- (A) The Grantee shall establish and maintain a system which assures effective control over, and accountability for, all funds, property and other assets used and/or attained under this Agreement.
- (B) The Grantee or any third party hired to perform the financial management responsibility, must implement a financial management system that:
  - (i) Maintains separate accounting records and source documentation for the activities funded under this Agreement and provides accurate financial information in the form specified by the Agency;
  - (ii) Provides for accurate, current and complete disclosure of the financial status of the Project and for the expenditure of all Resources listed in the Overall Project Budget as set forth in Attachment A;
  - (iii) Establishes records of budgets, receipts, and expenditures for each activity and demonstrates the sequence and status of receipts, obligations, disbursements, and fund balance; and
  - (iv) Is consistent with generally accepted accounting principles.

#### **7. Authority To Alter Project**

For a period beginning with the completion of any construction activities funded by this Agreement and continuing for a period of five (5) years thereafter, the Grantee shall not, without the express written permission of the Agency:

- (A) sell or transfer ownership of all or a portion of the property which is the subject of the Project;
- (B) discontinue operation of all or a portion of the Project;
- (C) materially alter or expand the Project's purpose or function; or
- (D) make any physical, structural or visual alterations to the Project.

Failure to comply may result in recapture of funds in accordance with Section 11 of this Agreement.

#### **8. Monitoring**

- (A) The Grantee shall monitor the activities covered by this Agreement, including those of contractors and subcontractors, to assure that all program requirements are being met.
- (B) The failure of the Grantee or its contractors or subcontractors to report as required or respond to requests for data or information in a timely manner may be grounds for holding the processing of requisitions or for suspension or termination of this Agreement

#### **9. Termination For Convenience**

The Agency and the Grantee may terminate this Agreement in whole, or in part, when agreed that the continuation of the Project would not produce the benefits anticipated hereunder, and shall agree upon the termination conditions, including the effective date thereof and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date thereof and shall cancel as many outstanding obligations as possible. The Agency may allow full credit for non-cancellable obligations, properly incurred prior to termination.

#### **10. Suspension Or Termination For Cause**

- (A) The Agency may suspend this Agreement, in whole or in part, at any time during its term and, upon 30 days written notice to Grantee, and may withhold further payments and/or prohibit Grantee from incurring additional obligations related to the Project when it is determined that Grantee has failed to substantially comply with the conditions of this Agreement.
- (B) The Agency may terminate this Agreement, in whole or in part, at any time during the term hereof, after 30 days written notice and a reasonable opportunity for comment from Grantee, when it is determined that Grantee has failed to substantially comply with the conditions of this Agreement. Notice to Grantee shall include the reasons for the proposed termination, together with the proposed effective date, and the date by which Grantee's comment must be received. Grantee shall be prohibited from incurring additional obligations related to the Project following receipt of such notice. A final determination shall be provided in writing to Grantee, including the reasons for the termination and the actual effective date thereof.

## 11. Recapture Of Funds

- (A) In connection with the suspension or termination of this Agreement or otherwise, the Agency may determine to recapture all or part of the Grant funds at any time during the term of this Agreement and the Grantee shall be obligated to return such funds to the Agency, if the Agency finds that the Grantee has failed to comply in any significant manner with the requirements of this Agreement.
- (B) At any time during the Period of Performance under this Agreement, the Agency may review all costs incurred by the Grantee and all payments made and income received. Upon such review the Agency shall disallow any items of income received, and any items of expense which it determines are not allowable or are in excess of approved expenditures. The Agency shall, by written notice, inform the Grantee and the Board of any such disallowance.
- (C) If the Agency disallows any itemized expenses for which payment has not yet been made, it shall refuse to pay such costs. If payment has been made related to costs that are subsequently disallowed, the Agency may deduct and/or withhold the amount of disallowed costs from any future payments under this Agreement or require that such costs be refunded to the Agency.
- (D) In no event shall the total funds disbursed by the Agency exceed the Award Amount. Grantee shall be solely responsible for obtaining any funds in excess of the Award Amount which are required to complete the Project.
- (E) No funds shall be distributed if the Project is abandoned prior to the first disbursement of Grant funds.
- (F) Abandonment after commencement of the Project, but before its completion, shall terminate this Agreement, and no further Grant funds shall be distributed. Such termination may subject Grantee to the recapture provisions of this Agreement.
- (G) This Agreement is funded pursuant to the Act. If the funds supporting this Agreement become unavailable or are reduced, the Agency may terminate or amend this Agreement and shall not be obligated to pay the Grantee from any other source of funds. In no event shall this Agreement be construed as a commitment by the State of Vermont, the Agency, or the Board to fund future applications or programs.

## 12. Other Provisions

- (A) Agreements to be in Writing. The activities required by this Agreement shall be performed by the Grantee or by one or more third parties, such as a contractor, or subcontractor, pursuant to one or more written agreements consistent with this Agreement.
- (B) Documentation. The filing of documents with the Agency does not require that the Agency undertake to review and comment upon any such documents, nor does the Agency in any way assume such obligation by requiring the filing of such documents. It shall be the Grantee's sole responsibility to take appropriate steps through the negotiation, execution, and, when necessary, enforcement, of legally binding documents to ensure that the obligations of this Agreement are met. Filing of such documents with the Agency or use of model documents provided by the Agency shall in no way diminish Grantee's obligations hereunder.
- (C) Liability of Grantee. The Grantee shall remain fully liable and obligated with respect to the use of the Grant funds, notwithstanding the contracting with any third party(s). The Grantee shall require any third party to comply with all lawful requirements necessary to insure that the Grant is used in accordance with this Agreement.
- (D) Assignment. This Agreement shall not be assignable by any party.
- (E) No Waiver. Any forbearance by the Agency in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

[END OF ATTACHMENT D]