

**STATE OF VERMONT
AGENCY OF TRANSPORTATION
MODIFIED GRANT AGREEMENT**

Agreement # CA0323

1. Parties: This is a Modified Grant Agreement (“MGA”) for the advancement of a transportation project between the State of Vermont, Agency of Transportation (hereinafter called “State”), and the **Town of Middlebury**, with principal offices at 77 Main Street, Middlebury, VT 05753, (hereinafter called “Subrecipient”). It is the Subrecipient’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Subrecipient is required to have a Vermont Department of Taxes Business Account Number.
2. Subject Matter: The subject matter of the MGA is the modification of the respective roles and responsibilities of the State and the Subrecipient with respect to the Grant Agreement, executed on February 6, 2013, by the State and the Subrecipient concerning the advancement of a transportation project known as **Middlebury WCRS (23)**. The MGA supersedes and replaces, in its entirety, the Grant Agreement. A detailed description of the project and the modified services to be provided by the Subrecipient are described in Attachment A to this MGA.
3. Maximum Amount: In consideration of the services to be performed by Subrecipient, the State agrees to pay Subrecipient, in accordance with the payment provisions specified in Attachment B, a sum not to exceed **\$250,000**.
4. Grant Term: The period of Subrecipient’s performance shall begin upon full execution of this MGA and authorization to proceed from the State and shall end upon **December 31, 2022**, or upon completion and acceptance of all work performed under the MGA, whichever comes first.
5. Source of Funds: Federal Highway Administration (FHWA), EA #**WCRS023**.
ARRA funded Yes No
6. CFDA Title: HIGHWAY PLANNING AND CONSTRUCTION; CFDA Number: 20.205; Federal Granting Agency: Federal Highway Administration; Research and Development Grant: Yes No .
7. Prior Approvals: If approval by the Attorney General’s Office is required by the granting agency, neither this Grant nor any amendment to it is binding until it has been approved by the Attorney General’s Office.
 - Approval by the Attorney General’s Office is required.
 - Approval by the Secretary of Administration is not required.
 - Approval by the CIO/Commissioner DII is not required.
8. Amendment: No changes, modifications, or amendments in the terms and conditions of this MGA shall be effective unless reduced to writing, numbered, and signed by the duly authorized representatives of the State and Subrecipient.
9. Cancellation: This MGA may be cancelled by either party by giving written notice at least 30 days in advance.

10. Attachments: This Grant Agreement consists of 20 pages, including the following attachments, which are incorporated herein:

- Attachment A – Modified Description of Project and Scope of Work to be Performed by Subrecipient
- Attachment B – Payment Provisions
- Attachment C – Standard State Provisions for Contracts and Grants
- Attachment D – Other Grant Agreement Provisions
- Attachment E – Special Conditions
- Attachment F – Applicable Standards and Design Criteria
- Attachment G – Personnel Requirements and Conditions
- Attachment H - Federal Funding Accountability and Transparency Act (FFATA) Provisions

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

STATE OF VERMONT
AGENCY OF TRANSPORTATION

SUBRECIPIENT:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: Secretary of Transportation

Title: _____

Date: _____, 20__

Date: _____, 20__

APPROVED AS TO FORM:

DATE: _____

ASSISTANT ATTORNEY GENERAL

ATTACHMENT A TO MODIFIED GRANT AGREEMENT
DESCRIPTION OF PROJECT AND
SCOPE OF WORK TO BE PERFORMED BY SUBRECIPIENT

1. Project Location and Description. The Project is described as follows:

| | |
|--------------------|--|
| Town | Town of Middlebury |
| Location | Middlebury Rail Bridges |
| Description | Lower the grade of the Vermont Railway in Middlebury and replace the VT 30 and Merchants Row bridges. |

2. State Assumption of Full Responsibility for the Project. This MGA modifies the Grant Agreement by reassigning to the State the Town's responsibilities for the development of the Project, except for those items defined in this MGA, for which the Town retains responsibility.

3. Commencement of Work. Subrecipient shall not commence work on or incur expenses for the Project until receiving authorization to proceed from the State or upon execution of the MGA, whichever occurs later.

4. Local Project Liaison (LPL). The Subrecipient will designate an employee, member of its legislative body, or other representative, as approved by the State, to be the Local Project Liaison (LPL) for the Project. The LPL will act on the authority granted by the Subrecipient to the extent it is consistent with the MGA.

5. Compliance with Federal, State and Local Requirements. In carrying out its activities pursuant to this MGA, Subrecipient will comply with the requirements of all federal, state, and local laws, ordinances and regulations applicable to the Project, including but not limited to all applicable provisions of Titles 23 (Highways) and 49 (Transportation) of the Code of Federal Regulations (CFR).

6. Compliance with Permits, Agreements and Clearances. In carrying out its activities pursuant to this MGA, Subrecipient will comply with the terms of all applicable and necessary local permits, agreements and clearances and will adhere to all conditions set forth in those documents.

7. Expeditious Pursuit of Project. Subrecipient will carry out its activities pursuant to this MGA in an expeditious manner in conformance with the Project schedule agreed upon by the Subrecipient and the State. Changes found necessary by either party to the MGA or to the schedule for the Project will be brought to the attention of the other party as soon as possible so that mutual agreement can be achieved.

8. Personnel Requirements. The Subrecipient will comply with the personnel requirements contained in Attachment G (Personnel Requirements and Conditions).

9. Assignment of State Representative. The State will assign a representative to act as its Project liaison with the Subrecipient.

10. Conformance with Standards. The parties agree that to the extent applicable, all work performed by the Subrecipient, or its duly authorized representative, shall conform to the applicable standards/design criteria set forth in Attachment F (Applicable Standards & Design Criteria), unless waived in whole or in part in writing by the State.

ATTACHMENT B
PAYMENT PROVISIONS

1. Funding Ratio. Up to the maximum limiting amount (MLA) shown below, the State agrees to pay 100% of Subrecipient's costs to retain and employ the LPL from the date of the MGA to the Final Acceptance and Completion of the Project. The State shall not be responsible for any other expenses incurred by the Subrecipient, except as otherwise provided in the Finance and Maintenance Agreement or as otherwise agreed upon in writing between the parties.

2. Non-Participating Costs. Work accomplished by the Subrecipient, and/or its consultant or contractor, which has been designated by the State as non-participating for purpose of financial reimbursement, shall be the sole responsibility of the Subrecipient. Examples of non-participating costs include elements outside the scope of work, utility work not related to the project scope, any work outside of the Project limits and approaches, and that portion of right-of-way settlements which exceed "Fair Market Value," as determined by reviewing appraiser in accordance with 49 CFR § 24.104 (Review of appraisals). Due to federal regulations that require all project costs to be reported within the federal financial system, the Subrecipient shall document and supply a summary of all non-participating costs. This shall include costs incurred by the Subrecipient above the maximum limiting amount of this Agreement.

3. Compliance with Vermont Prompt Payment Act. To the extent it is applicable, Subrecipient, with respect to work performed pursuant to this MGA, agrees to comply with the provisions of the Vermont Prompt Payment Act (9 V.S.A. Chapter 102).

4. Reimbursement if Project Not Constructed due to Subrecipient. If at any time the Subrecipient no longer desires the improvements as specified for the Project, the Subrecipient shall immediately notify the State in writing. As provided by 19 V.S.A. § 309c(a), the State shall consult with the Subrecipient about the Subrecipient's obligation to repay project costs. The Secretary of Transportation shall then make the final determination of the amount and schedule for the repayment that shall be made to the State by the Subrecipient, considering applicable laws and regulations. Pursuant to 19 V.S.A. §§ 5(d)(13) and 309c(b), within 15 days of the Secretary's determination, the Subrecipient may petition the Vermont Transportation Board for a hearing to determine whether the amount of the Subrecipient's repayment obligation as determined by the Secretary may be reduced.

5. Excess Costs. The parties agree that costs incurred by, at the direction of, or for the Subrecipient, when such costs exceed the totals indicated in Section 6, below, will not be eligible for federal or state participation unless those costs have been incorporated into this MGA through a written amendment.

6. Allocation of Funds by STATE. On the basis of the Subrecipient's request for authorization to retain the LPL, and subject to the availability of state and federal funds, the State agrees to make available to the Subrecipient a sum not to exceed **\$50,000** in State funds and **\$200,000** in federal-aid funds for retaining the LPL throughout the duration of the Project.

7. Payment of Invoices by the STATE. The State agrees to pay the Subrecipient the federal and state shares of properly documented bills invoiced by the Subrecipient.

Invoices, which shall clearly reference the Project name and number, shall be sent to:

Name: Joel Perrigo, Local Project Manager
Division: Local Transportation Facilities
Address: Vermont Agency of Transportation
National Life Building
One National Life Drive
Montpelier, VT 05633-5001

8. Payment of Amounts Found Due by Audit. In the event an audit or inspection by a certified or registered public accountant or an authorized agent of the State reveals that monies are due and owing to the State from the Subrecipient, for whatever reason, then the Subrecipient shall pay such sums to the State within thirty (30) days of written notification of the findings of such audit or inspection.

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED JULY 1, 2016**

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 the 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. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party’s indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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 in the event that 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.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

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 the 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 the Contract, 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. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, 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 the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, 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 the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR 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.

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 the 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 the 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 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 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

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. Certification Regarding Use of State Funds: In the case that 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.

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

25. 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.

26. 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.

27. 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.

28. Termination: In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- 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. No Implied Waiver of Remedies:** A 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.

- 29. 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.
- 30. 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.
- 31. 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.
- 32. 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 continental United States, except with the express written permission of the State.

(End of Standard Provisions)

ATTACHMENT D
OTHER GRANT AGREEMENT PROVISIONS
(Add or strike-out provisions as appropriate; show strike-outs)

1. **Cost of Materials:** Subrecipient will not buy materials and resell to the State at a profit.
2. **Availability of Federal Funds:** This contract is funded in whole or in part by federal funds. In the event the federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract immediately, and the State shall have no obligation to pay Subrecipient from State revenues beyond the State share provided for in Attachment B.
3. **Identity of workers:** The Subrecipient will assign Jim Gish to perform as the LPL ~~under the provisions of this agreement and this individual shall be considered~~. Should this individual become unavailable during the period of performance, the State shall have the right to approve any proposed successor, which approval shall not be unreasonably withheld, or, at its option, to cancel the remainder of the MGA.
4. ~~**Work Product Ownership:** Upon full payment by the State, all products of the Subrecipient's work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by Subrecipient.~~
5. **Prior Approval/Review of Releases:** Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by the Subrecipient under this MGA shall be approved/reviewed by the State prior to release.
6. ~~**Ownership of Equipment:** Any equipment purchased by or furnished to the Subrecipient by the State under this grant agreement is provided on a loan basis only and remains the property of the State.~~
7. **Subrecipient's Liens:** Subrecipient will discharge any and all contractors' or mechanics' liens imposed on property of the State through the actions of subcontractors.
8. ~~**Performance Bond:** The Subrecipient shall, prior to commencing work under this grant agreement, furnish to the State a payment and performance bond from a reputable insurance company licensed to do business in the State of Vermont, guaranteeing the satisfactory completion of the grant agreement by the Subrecipient and payment of all subcontractors, suppliers and employees.~~
9. ~~**Professional Liability Insurance:** Before commencing work on this grant agreement and throughout the term of this grant agreement, Subrecipient shall procure and maintain professional liability insurance for any and all services performed under this grant agreement, with minimum coverage of \$100,000.00 per occurrence.~~
10. **Federal-Aid Construction Work:** The Subrecipient will comply with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a 7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements.
11. ~~**Health Insurance Privacy & Portability Act:** The confidentiality of any health care information~~

~~acquired by or provided to the independent subrecipient shall be maintained in compliance with any applicable State or federal laws or regulations.~~

12. Audit of Federal Subrecipient: Under current interpretations of federal law, the Subrecipient will be subject to the federal Single Audit Act. Subrecipient will comply with audit requirements contained in Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”), 2 CFR 200. ~~The cost of such an audit will be borne by the Subrecipient is included in the payment provisions of this Grant.~~

13. Requirement to Have a Single Audit: If this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, it is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program-specific audit.

The Subrecipient may elect to have a program-specific audit if it expends funds under only one federal program and the federal program’s laws, regulations or grant agreements do not require a financial statement audit of the entity.

The Subrecipient shall provide organization-wide financial statements and a schedule of federal financial assistance for VTrans funds within nine (9) months of the end of the fiscal year. The federal financial assistance schedule will list the funds by title, Code of Federal Domestic Assistance (CFDA) number, pass-through Municipal’s number, award amount, receipts, and expenditures. At the Program Manager’s discretion, agreed upon procedures, related to the VTrans schedule of federal financial assistance, may be required to be performed by a certified independent audit firm.

The State reserves the right to withhold reimbursement of project costs if the Subrecipient does not comply with any provisions in the MGA.

14. Equal Opportunity Plan: If they are required by the Federal Office of Civil Rights to have a plan, the Subrecipient must provide a copy of the approval of their Equal Opportunity Plan.

15. Supplanting: If required, the Subrecipient will submit a Certification that funds will not be used to supplant local or other funding.

16. MGA Term: The MGA Term is the period during which grant funds may be expended. Expiration of the MGA Term does not relieve the Subrecipient from the duty to fulfill long-term grant requirements, some of which may extend indefinitely. Such long-term requirements may include, but are not limited to, maintenance of the completed project, applicable reporting requirements, and obtaining the State’s approval before selling or transferring equipment or property acquired with grant proceeds.

17. Responsibility for Project Costs Determined Ineligible for Reimbursement by FHWA: In the event that Project costs incurred are not reimbursed by the Federal Highway Administration due to the Subrecipient’s failure to follow proper federal guidelines and/or the expenditures are found by the State or FHWA to be federally non-participating items, the Subrecipient shall be responsible for 100% of such Project costs.

18. Limits on Reimbursement: The State will not reimburse the Subrecipient for premium rate overtime unless the State has given its prior written approval for such overtime. The State will

reimburse the Subrecipient for reasonable and necessary expenses actually incurred in the performance of this MGA, however, to the reimbursement limitations for state employees. The State will not reimburse the Subrecipient for meals taken during travel not requiring an overnight stay away from home.

- 19. Compliance with Cost Principles:** Grantee shall comply with the requirements set forth in the Uniform Guidance as appropriate for the Grantee's type of organization.
- 20. Compliance with Administrative Regulations:** Grantee shall comply with the requirements of the Uniform Guidance as appropriate for the grantee's type of organization.
- 21. Resolution of MGA Disputes.** The parties shall attempt to resolve any disputes that may arise under this Grant by negotiation. Any dispute not resolved by negotiation shall be referred to the State's appropriate Director for determination. If the Grantee is aggrieved by the decision of the Director, the Grantee may appeal in writing to the Transportation Board, through the Director, within 30 calendar days of the Director's decision, but not thereafter. The notice of appeal shall completely outline the nature and extent of the issue(s) appealed and shall include copies of any and all supporting documentation. The decision of the Transportation Board may be appealed to Vermont Superior Court by either party as provided in 19 V.S.A. 5(d)(4).
- 22. Interpretation of MGA.** If an ambiguity or question of intent arises with respect to any provision of this Grant, the Grant will be construed as if drafted jointly between 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 Grant.

ATTACHMENT E
SPECIAL CONDITIONS

1. **Design Features:** In that this project involves improvements to Municipal- owned infrastructure, the State will make all reasonable efforts to timely obtain and respect Subrecipient's input on issues related to design features of such infrastructure, including but not limited to public access to local businesses, temporary parking during construction, traffic control and overall public relations.
2. **Selection of Local Project Liaison:** At this time, the State has approved the use of Jim Gish to serve as the Local Project Liaison (LPL) as an employee of the Town. Any change to the designated LPL must be approved in writing by VTrans. In the event that the Town elects to procure a consultant LPL or replace Jim Gish as LPL, the State will participate in the selection of the LPL. This may include a representative from the following VTrans programs: Local Transportation Facilities, Structures and Rail. Subrecipient must obtain State concurrence before the Town enters into an agreement with an LPL other than Mr. Gish.
3. **Plan Submittals:** Subrecipient agrees to review and comment upon design plan submittals within 3 weeks of receipt. Environmental submittals are not bound by the 3-week review period.
4. **Amenities:** Any project components considered amenities will be non-participating.
5. **Railroad Coordination:** The Town will copy the Local Transportation Facilities Project Manager, the Local Project Manager, and the VTrans Rail Section on all correspondence involving Vermont Railway (VTR). Verbal communication with VTR will be summarized in writing and included in the project file.

ATTACHMENT F
APPLICABLE STANDARDS & DESIGN CRITERIA

- A. Vermont State Standards for Design
- B. Latest Edition of the Manual for Uniform Traffic Control Devices (MUTCD)
- C. The most recent appropriate version of the VTrans Standard Specifications for Construction, as amended with its most recent General Special Provisions and Supplemental Specifications, but only to the extent that these standards are not inconsistent with this MGA.
- D. VTrans Utilities Manual
- E. Vermont Pedestrian and Bicycle Facility Planning and Design Manual
- F. American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide
- G. AASHTO Guide for Design of Pavement Structures
- H. The most recent version of the Highway Capacity Manual
- I. VTrans Hydraulics Manual
- J. The Approved Project Environmental Document
- K. VTrans Structures Manual
- L. Code of Federal Regulations (CFR), Titles 23 (Highways), 48 (Federal Acquisition Regulations System) (FARS), and 49 (Transportation)
- M. VTrans Procedures for Selecting Contractors and Specifications for Contractor Services, Including Customary State Contract Provisions, but only to the extent that these standards are not inconsistent with this MGA.
- N. AASHTO Specifications for Highway Bridges
- O. VTrans Design Exception Procedure
- P. VTrans Right-of-Way Manual
- Q. VTrans Policy for CADD standards
- R. U.S. Department of Justice rules implementing the Americans with Disabilities Act (ADA), 28 CFR Part 36
- S. Local Transportation Facilities (LTF) Guidebook
- T. Transportation Enhancement Operations Program Manual

If the Grantee believes that there is a discrepancy in the information contained herein or in the above-listed requirements, the Grantee shall notify the State. The State, after consultation with the Grantee, and in accordance with Bulletin 3.5, will, in its sole discretion, determine which requirement takes precedence.

ATTACHMENT G
PERSONNEL REQUIREMENTS AND CONDITIONS

A. Standards of Conduct

1) No employee, officer or agent of the Subrecipient shall participate in the selection, award or administration of a contract support by state or federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- the employee, officer or agent, or
- any member of his or her immediate family, or
- his or her partner, or
- an organization which employs, or is about to employ, any of the above,

has a financial or other interest in the consultant or contractor selected for award. Subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or any gift of any kind or value from consultants, potential consultants, contractors, potential contractors, or parties to sub-agreements. Violation of this standard will result in penalties, sanctions, or other disciplinary actions to the extent permitted by State, Federal or local law.

2) Except where it conflicts with fairness toward competitors, Subrecipient shall avoid any appearance of a conflict of interest in the award of a contract. If there is such an appearance of a conflict of interest wherein a reasonable person might conclude that the contractor was selected for improper reasons, the Subrecipient shall disclose that fact and, regardless, should document its reasons for selection of all contractors.

B. The Subrecipient shall employ only qualified personnel in responsible charge of the supervision of work.

C. Except with the approval of the State, during the life of this Agreement, the Subrecipient will not employ:

1) Personnel on the payroll of the State who are directly involved with the awarding, administration, monitoring, or performance of the contract or the Project(s) which are the subject(s) of this Agreement, or

2) Any person so involved within one (1) year of termination of employment with the State.

ATTACHMENT G
PERSONNEL REQUIREMENTS AND CONDITIONS (CONTINUED)

D. The Subrecipient warrants that no company or person has been employed or retained other than a bona fide employee working solely for the Subrecipient to solicit or secure this Agreement and that no company or person has been paid or has an agreement with the Subrecipient to be paid, other than a bona fide employee working solely for the Subrecipient, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of the warranty, the State shall have the right to annul this Agreement without liability to the State and to regain all costs incurred by the State in the performance of the Agreement.

E. The State reserves the right to require the removal from the Project of any person employed by the Subrecipient for misconduct, incompetence or negligence, as determined by the Secretary of the Vermont Agency of Transportation, in the due and proper performance of his/her duties, or who neglects or refuses to comply with the requirements of this Agreement.

ATTACHMENT H
FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT
(FFATA)
PROVISIONS

This MGA is funded in whole or in part with Federal funds. Under the provisions of the Federal Funding Accountability and Transparency Act ("Transparency Act" or "FFATA") of 2006 and subsequent 2008 amendments, in those cases where the federal portion of the grant is greater than \$25,000, the grantee shall provide:

A) The Total Compensation and Names of the top five executives if:

- o More than 80% of annual gross revenues are from the Federal government and
- o Those revenues are greater than \$25 million annually and
- o Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).

B) The Legal Name and D-U-N-S® Number on File with the Federal Central Contractor Registration ⁽¹⁾:

| | |
|----------------------|--------------------------------|
| Print Legal CCR Name | D-U-N-S® Number ⁽²⁾ |
|----------------------|--------------------------------|

(1) The Central Contractor Registration (CCR) is the primary registrant database for the U.S. Federal Government. CCR collects, validates, stores and disseminates data in support of agency acquisition missions. FREE registration is available at: <http://www.ccr.gov/Default.aspx>.

(2) The D-U-N-S Number is a unique nine-digit identification number assigned and maintained solely by Dun & Bradstreet (D&B). D-U-N-S Number assignment is FREE for all businesses required to register with the US Federal government (see # 1 above) for contracts or grants. Created in 1962, the Data Universal Numbering System or D-U-N-S® Number is D&B's copyrighted, proprietary means of identifying business entities. Register at: https://eupdate.dnb.com/requestoptions.asp?cm re=HomepageB*TopNav*DUNSNumberTab