

CONTRACT FOR CONSULTING SERVICES

1. Parties: This is a contract for consulting services between the Town of Middlebury and PlaceSense.

2. Subject Matter: This contract is for consulting services generally on the subject of drafting revisions to Middlebury's Land Use and Development Regulations and developing maps and other supporting documents needed for a Neighborhood Development Area application. Attachment A describes the services that PlaceSense will provide in detail.

3. Maximum Amount: In consideration of the services to be performed by PlaceSense, the Town of Middlebury agrees to pay PlaceSense, in accordance with the budget specified in Attachment A, a sum not to exceed \$22,000. PlaceSense will invoice the Town of Middlebury on a monthly basis. Invoices not paid within 60 days of issuance will be assessed a 10% late charge.

4. Contract Term: The period of this contract begins on 1 July 2021 and ends on 15 September 2021.

5. Amendment: Any change to the terms and conditions of this contract must be made in writing, and must be signed and dated by the duly authorized representative of PlaceSense and the Town of Middlebury.

6. Cancellation: The duly authorized representative of PlaceSense or the Town of Middlebury may cancel this contract by giving written notice at least 15 days in advance.

7. Attachments: This contract incorporates the following attachment:

Attachment A: Scope of Work

Attachment B: State of Vermont Grant Agreement # 07110-MP-2020-Middlebury-53

8. Subcontracts: PlaceSense will not enter into any subcontracts to provide services covered by this contract without written approval of the Town of Middlebury.

9. Interpretation: This contract must be interpreted according to the laws of the State of Vermont.

10. Counterparts: This contract must be executed in two counterparts, with each party retaining a fully executed original.

We the undersigned parties agree to be bound by this contract.

BY: Town of Middlebury

BY: PlaceSense

Signature

Signature

Type name and title

Brandy Saxton, Owner

Type name and title

Date

Date

SCOPE OF WORK

Date:	11 June 2021
Project name:	Middlebury Bylaw Revisions
Prepared for:	Jennifer Murray, Planning Director Town of Middlebury jmurray@townofmiddlebury.org

Item & Description	Hours	Rate	Fee	Completed By
1. Project Administration. Includes project organization and ongoing communication and work sessions with town staff.	16	\$100	\$1,600	15-Sep
2. Technical Review. The consultant will review adopted bylaw to assess conformance with statute and NDA program requirements, and compatibility with the town and downtown master plans. The technical review will incorporate any staff list of bylaw issues to be addressed. It will also recommend approaches to improve effectiveness of the bylaw at furthering the land use goals established in the downtown master plan, particularly related to housing, and to meeting NDA program requirements. The technical review will be provided to the PC.	40	\$100	\$4,000	31-Jul
3. Outline. Working in coordination with town staff, the consultant will prepare a working outline to guide the drafting of bylaw revisions. The outline will be presented to the PC for review and comment.	8	\$100	\$800	31-Jul
4. Draft Bylaw Revisions. The consultant will draft revised bylaw provisions in accordance with the findings and recommendations of the technical review and following the proposed outline. This is anticipated to include changes to downtown zoning districts, allowed uses and dimensional standards as needed to further the land use goals established in the downtown master plan and meet NDA program requirements. Other elements of the bylaw, such as administrative requirements and site plan standards, may be revised. Design standards and guidelines may be developed as needed to supplement standard zoning district use and dimensional provisions.	60	\$100	\$6,000	31-Aug
5. PC Workshops. The consultant will assist town staff with presenting proposed bylaw language to the PC for review and discussion.	16	\$100	\$1,600	15-Sep
6. Finalize Bylaw Revisions. The consultant will refine the proposed bylaw language as needed based on discussion with town staff and PC. The final deliverable product will be a draft ready for town staff and the PC to present to the community.	24	\$100	\$2,400	15-Sep
7. NDA Boundary and Checklist. The consultant will work with town staff to develop a proposed NDA boundary. The delineation of the boundary will be integrated with review of and potential revisions to zoning district boundaries to ensure compatibility with NDA program requirements. The consultant will also prepare a checklist demonstrating how proposed bylaw revisions align with NDA neighborhood design guidelines. Town staff will be able to use the checklist to prepare an NDA application once bylaw revisions are adopted.	16	\$100	\$1,600	31-Aug

8. Zoning District Map. The consultant will prepare a draft zoning district map incorporating any changes to district boundaries and proposed new zoning districts.	16	\$100	\$1,600	31-Aug
9. NDA Mapping. The consultant will prepare the series of maps required as part of an NDA application (proposed area, natural resources, slopes, infrastructure, zoning, designated areas, historic districts).	24	\$100	\$2,400	15-Sep
Project Total:			\$22,000	(220 hours)

STATE OF VERMONT GRANT AGREEMENT

Part 1 - Grant Award Detail

SECTION I - GENERAL GRANT INFORMATION

¹ Grant #: 07110-MP-2020-Middlebury-53		² Original <input type="checkbox"/> Amendment # <u>X</u>	
³ Grant Title: Downtown Zoning Bylaw Update			
⁴ Amount Previously Awarded: \$20,000		⁵ Amount Awarded This Action: \$ 0.00	⁶ Total Award Amount: \$20,000
⁷ Award Start Date: 12/1/2019		⁸ Award End Date: 9/30/2021	⁹ Subrecipient Award: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
¹⁰ Vendor #: 39947	¹¹ Grantee Name: Town of Middlebury		
¹² Grantee Address: 77 Main Street			
¹³ City: Middlebury		¹⁴ State: VT	¹⁵ Zip Code: 05753
¹⁶ State Granting Agency: Agency of Commerce and Community Development			¹⁷ Business Unit: 07110
¹⁸ Performance Measures: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	¹⁹ Match/In-Kind: \$2,000.00 Description: 10% of Grant Award Required		
²⁰ 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

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

SECTION III - FUNDING ALLOCATION

STATE FUNDS

Fund Type	²⁷ Awarded Previously	²⁸ Award This Action	²⁹ Cumulative Award	³⁰ Special & Other Fund Descriptions
General Fund	\$0.00	\$0.00	\$0.00	
Special Fund	\$20,000	\$0.00	\$20,000	Municipal Planning Grant Funds
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

³¹ CFDA #	³² Program Title	³³ Awarded Previously	³⁴ Award This Action	³⁵ Cumulative Award	³⁶ FAIN	³⁷ Federal Award Date	³⁸ Total Federal Award
		\$0.00	\$0.00	\$0.00			\$0.00
³⁹ Federal Awarding Agency:		⁴⁰ 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:					
Total Awarded - All Funds		\$20,000	\$0.00	\$20,000			

SECTION IV - CONTACT INFORMATION

STATE GRANTING AGENCY

NAME: Jenni Lavoie
TITLE: Grant Specialist
PHONE: 802-828-1948
EMAIL: Jennifer.lavoie@vermont.gov

GRANTEE

NAME: Kathleen Ramsay
TITLE: Town Manager
PHONE: (802) 388-8100 X201
EMAIL: kramsay@townofmiddlebury.org

MUNICIPAL PLANNING GRANT AGREEMENT

1. **Parties:** This is a Grant Agreement between State of Vermont **Agency of Commerce and Community Development** (hereinafter called "State" or "Agency") and the Town of Middlebury with principal place of business at 77 Main Street, Middlebury, Vermont (hereinafter called "Grantee"). Grantee is not required by law to have a Business Account Number from the Vermont Department of Taxes.
2. **Subject Matter and Source of Funds:** This agreements is authorized by 24 V.S.A. § 4306
3. **Award Details:** Amounts, dates, and other award details are as shown in the attached **Grant Agreement Part 1 - Grant Award Detail**. A detailed scope of work covered by this award is described in **Attachment A**.
4. **Amendment:** No changes, modifications, or amendments in the terms and conditions of this Grant Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Grantee.
5. **Cancellation:** This Grant Agreement may be suspended or cancelled by either party by giving written notice at least 30 days in advance.
6. **Attachments:** This grant consists of 14-18 pages including the following attachments that are incorporated herein:
 - Attachment A - Scope of Work to be Performed and Budget Summary
 - Attachment B - Payment Provisions
 - Attachment C - Customary State Grant Provisions
 - Attachment D - Procurement Procedures and Other Grant Requirements
7. **Order of Precedence:** Any ambiguity, conflict or inconsistency in the Grant Documents shall be resolved according to the following order of precedense:
 - Agreement
 - Agreement C
 - Agreement D
 - Agreement A
 - Agreement B

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: Josh Hanford, Commissioner
Department of Housing and Community Development

Name: Kathleen Ramsay Town Manager
Town of Middlebury

Attachment A
 Work Plan and Budget
 07110-MP-2020-Middlebury-53
 Town of Middlebury

Task Name	Description of Task	Paid Personnel	Personnel			Material		Total Cost
			Hours	Hourly Rate	Cost	Description	Cost	
Task 1- Analysis and Preparation	Consultant conduct a review of existing zoning, recent input, and master plan	Consultant	50	\$100	\$5,000			\$5,000
Task 2- Public Process and code development	Incorporate results of previous public process, conduct 5 visits with steering committee, and 2 public meetings. Work with staff and PC to develop code revisions.	Consultant	100	\$100	\$10,000			\$10,000
Task 3- Draft Regulations	Produce a draft copy of the zoning amendments	Consultant	50	\$100	\$5,000			\$5,000
Task 4- Final Regulations	Incorporate comments into bylaw amendments after the public hearing process	Consultant	20	\$100	\$2,000			\$2,000

Totals

\$22,000

\$22,000

Total Project Cost: \$22,000

State Funds - Grant Amount Requested: \$20,000

Total Match Funds \$2,000

Minimum Required Match Funds: \$2,000
(10% of State Grant Funds)

Additional Match Funds: \$0

Attachment B
PAYMENT PROVISIONS

I . PAYMENT PROVISIONS AND REPORTING REQUIREMENTS

Upon execution of this Agreement and the Department's receipt of a submitted Requisition, the Department shall authorize 40% of the Grant Award to be released to the Grantee. A progress report included with a second Requisition is due by August 31, 2020. Upon review and approval of the progress report, the Department shall release an additional 30% of the Grant Award provided that the progress report reflects adequate progress towards completion . The final 30% of the Grant Agreement is a reimbursement for final expenses incurred by September 30, 2021, and is subject to the Grantee's expenditure of any required Match Funds set forth in Attachment A. The Grant Award and Match Funds, identified in Attachment A may be proportionately reduced if the Total Project Costs are not fully expended .

All costs for which reimbursement is requested must comply with Attachment A and be incurred during the Period of Performance.

The Grantee shall submit, no later than October 31, 2021, grant closeout documentation which shall include the following:

- a. Final Report, the report shall be written on a form provided by the Department, via GEARS, the online grants management system.
- b. Final Product, copies of any final products outlined in Attachment A. The final product must include evidence that the Municipal Planning Grant program, administered by the Department of Housing and Community Development, is credited for funding on the product itself.
- c. Financial Documentation, including a summary ledger to accurately maintain financial records throughout the grant period; and
 - i. Copies of all invoices and receipts for all project expenditures, including match funds; and one of the following:
 - ii. Copies of all canceled checks, or
 - iii. A detailed transaction report which includes, date, recipient, check numbers, amount, and the report must be signed and certified by the Treasurer as true and accurate.
 - iv. Canceled checks or detailed transaction report must demonstrate that all invoices have been paid by the municipality.
- d. If GIS work was done with grant funds, and if new data layers were created, please confer with the consultant and have them submit the new data layers via the GIS Data Submission Online Intake (<https://vcgi.vermont.gov/data-and-programs/share-map-data#GISForms>)

Upon agreement between the Department and the Grantee that the final report and activities have been completed satisfactorily, the Department shall authorize the release of the final 30% of the Grant Award.

All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Grantee, including but not limited to progress reports and other proofs of work.

[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 written notice to the State.

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

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

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its

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

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

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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

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

16. Taxes Due to the State:

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

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

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

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

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

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

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

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

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

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

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

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

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

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

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

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

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may

cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

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

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

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

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

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

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

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a

State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

**ATTACHMENT D
PROCUREMENT PROCEDURES
AND
OTHER GRANT REQUIREMENTS**

I. Procurement Procedures

A. Background:

Municipal planning grants are state funds granted to municipalities. Procedures for spending these funds should be consistent with the principles of fair access for vendors of goods and services that govern the expenditure of state funds directly by state government.

Procurement refers to the purchase of personal services (performed by people) or tangible goods. The grantee may use its established procurement procedures provided they are at least equivalent to the standards set forth below.

B. Methods of Procurement:

1. Contracts up to and including \$10,000 - the Grantee is required to obtain price or rate quotations from a reasonable number of sources, but no less than two, and maintain a record of the same in its files.
2. Contracts for more than \$10,000 - Competitive Selection: An RFP or RFQ should be broadly publicized. Depending on the subject matter of the contract, notice should be published in local newspapers, newspapers of general circulation, relevant websites, and/or trade or professional publications, as the circumstances warrant. Grantee may also solicit bids from potential contractors directly.
 - a. Proposals/qualifications shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the project.
 - b. RFP/RFQ shall identify the scope of services, the procedural and substantive requirements of the bidding process, the key elements of the contract to be signed by the successful bidder, and all significant evaluation criteria, including their relative importance in the selection process.
 - c. The Grantee shall document the method it uses to objectively evaluate the proposals and to make its final selection. Such documentation shall be maintained in Grantee's official records.
 - d. The award shall be awarded to the bidder whose proposal is most responsive to the RFP/RFQ evaluation criteria taking into consideration price and other factors identified by the Grantee.
3. Noncompetitive Selection: This method of procurement may be used when competitive selection is not possible for any of the following reasons:
 - a. The item or service is available only from a single source.
 - b. Public emergency or urgent need for the service or item does not allow time for a competitive selection process.
 - c. After solicitation of a number of sources, competition is determined inadequate.

The Grantee must maintain in its files a thorough explanation of why non-competitive procurement is appropriate under the circumstances.

In no event shall any contract greater than \$10,000 be sole sourced without prior written approval from the Department.

4. Other Methods of Selection: Additional innovative procurement methods may be used by Grantee with the prior written approval of the Department.
5. Negotiations with Potential Contractors: The Grantee may select the winning bidder based on the responses to the RFP/RFQ, and then negotiate final terms of the contract with that entity.

C. Exceptions to Procurement Requirements:

1. Use of the regional planning commission (RPC) as agent (for rural towns and consortium projects only): If the Grantee is a rural town as defined in Vermont Statutes Title 24 section 4303 (25), or is a consortium of two or more municipalities, Grantee need not engage in competitive procurement procedures to work with the RPC, subject to the following:
 - a. The Grantee must identify the RPC as its agent for carrying out the provisions of this Agreement. As such, the RPC will be responsible for grant reporting and other administration associated with the grant. The Grantee will remain responsible for writing checks, and other fiscal agent tasks.
 - b. The RPC must document and justify its charges. All charges must be in accord with local standards for similar work.
 - c. Any contracts awarded by the RPC to other contractors or suppliers in connection with this Agreement must follow these procurement standards and must incorporate the contract provisions contained in Sections E and F, below.
2. Use of Contractor selected in competitive process at an earlier stage: If the Grantee engaged in a competitive procurement process as part of developing its Grant Application, and selected a contractor at that time, there is no requirement to re-open the selection process, provided that the scope of work remains substantially similar to what was in the Contractor's proposal.
3. Use of same architect, engineer, or other professional at different stages of the same project. If the Grantee is satisfied with the qualifications and performance of the architect, engineer or other professional who was awarded and performed some work in connection with the grant, it may offer that firm or individual additional work under the grant agreement without going through the competitive selection process.
4. If the Grantee utilized the services of a consultant to prepare its grant application, but did not go through a competitive process to select that consultant, the Town must make the application available to prospective bidders as part of the RFP/RFQ process to ensure a fair and open competition among vendors.
5. Waiver: Upon prior request by the Grantee, the Department may waive any provision of the procurement procedures not required by law whenever it is determined that undue hardship will result from applying the requirement and that the best interests of the State are served by such waiver.

D. Conflict of Interest:

Conflict of interest is defined as “a significant pecuniary interest of an elected officer of the municipality, or of an appointed official whose work is related to the subject of this grant, or a member of such a person’s immediate family or household, or of a business associate of such a person, in the selection of a vendor of goods and/or services under this grant.”

The municipality must avoid actual conflicts of interest in this grant program. In addition, it should be sensitive to the appearance, as well as the reality of, conflict of interest with respect to its procurement of goods and services using these grant funds, and consult the Department when questions arise.

E. Contract Requirements:

1. For personal services up to and including \$1,000, a written contract is not required although it is recommended. Any written contract should address the issues outlined below
2. Form of contract for personal services over \$1,000:
 - a. A written contract signed by an authorized representative of (1) the Contractor and (2) the Grantee’s legislative body is required. The contract must identify: the parties, the subject matter, the scope of work, the maximum amount to be paid, the products to be delivered and the duration of the contract. The contract should also contain provisions for amendment, cancellation, attachments, and controlling law. See model personal services contract at <http://accd.vermont.gov/sites/accdnew/files/documents/CD/CPR/MPG/CPR-MPG-Sample-Contract.doc>
 - b. The contract shall include the basis for the total cost or contract price, an itemization of all costs for materials, personal services, which include the hiring of staff, the names of any persons whose participation the Grantee considers to be crucial to the award of the contract and provisions for what to do if such persons need to be replaced, consultants, and any other purchased items which together add up to the total cost.
 - c. Payment provisions shall include the schedule of payment. It is useful to schedule the withholding of a percentage, such as 10%, until the Grantee is sure the work has been satisfactorily completed, for instance, until after the report has been completed and Grantee has reviewed it, or until Grantee has found the product to work as it was intended.
 - d. All relevant products must be compatible with the Vermont Geographic Information System (VGIS) and meet all VGIS standards, which are available from the Vermont Center for Geographic Information.

F. Standard State Requirements of Bidders:

Grantees must ensure the following requirements are met by those awarded a contract and are explicitly included in any such contract:

1. The Contractor will maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to costs incurred under this Agreement and make them available at reasonable times to the Grantee and the State during the period of this contract and for three years thereafter for inspection by any authorized representatives of the State. The official records, however, will be maintained by the Grantee. 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, including any period for filing an appeal. The Grantee and the State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this contract.

2. The Contractor certifies under the pains and penalties of perjury that he or she 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 as of the date the Contractor signs this contract.
3. The Contractor shall not assign or subcontract the performance of this agreement or any portion thereof to any other contractor without the prior written approval of the State. The Contractor also agrees to include in all subcontract agreements a tax certification in form substantially identical to paragraph 2 above.
4. The Contractor agrees to comply with the requirements of Title 21 of the Vermont Statutes, sections 495-496, relating to fair employment practices, to the extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the contractor. Contractor further agrees to include this provision in all subcontracts.
5. The Contractor states that as of the date the contract 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
 - d. Has agreed to a payment plan with the Vermont Office of Child Support and is in full compliance with that plan. Contractor makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Contractor is a resident of Vermont, Contractor makes this statement with regard to support owed to any and all children residing in any other state, territory, or possession of the United States.

II. Press and Public Communication

If the Grantee, Subgrantee, or contractor issues any press release, public communication or product pertaining to the Project assisted by this Agreement, it shall include a statement that the project is funded by a Municipal Planning Grant awarded by the Department of Housing and Community Development.

III. GIS Work

For any projects including a GIS component:

1. The Grantee shall ensure that any contracts, subgrant agreements or subcontracts that are issued through this grant to develop GIS data shall require that the contractor, subgrantee, or subcontractor complete the GIS Data Submission Online Intake (<http://vcgi.vermont.gov/data-and-programs/share-map-data#GISForms>) as part of its final work product.

ATTACHMENT D

2. With the GIS Data Submission Online Intake Form, Grantee shall also submit digital copies of GIS data produced with the Grant Award or any portion thereof if such data is not already available in the Vermont Open Geodata Portal. Digital GIS data includes spatial and tabular data attributes, documentation files, and must meet applicable standards as to data format and documentation of all products using the VGIS metadata standard. Note: it is not necessary to submit subsets of data layers that are already listed in the VGIS Data Catalog (data hosted at the Vermont Open Geodata Portal). A subset would be an extract of existing data, such as road centerline data, for example.
3. Digital Spatial Data will be submitted via the GIS Data Submission Online Intake Form as a single .zip file with documents in the Vermont State Plane Coordinate System, as specified in Title 1, Chapter 17 § 671-679. Any of the following file formats is acceptable:
 - a. .shp (Shapefile - which also consist of files with other extensions such as .dbf and .shx)
 - b. .dwg (CAD file)
 - c. .dxf (CAD file)
4. All data and materials created or collected under this Agreement - including all digital data - are public records. The parties may utilize the information for their own purposes but shall not copyright these materials.

[Technical assistance and information on these GIS standards, guidelines and procedures are available from the Vermont Center for Geographic Information, Inc. (<https://vcgi.vermont.gov>) or 802-585-0820.]

IV. Termination

In the event of termination prior to disbursement of the entire grant amount, the parties shall agree upon the termination conditions and, in the case of partial terminations, the work that will be deleted from the Work Plan. The Grantee shall not incur new obligations for the terminated portion after the date of termination and shall cancel as many outstanding obligations as possible. The Grantee shall be allowed credit for non-cancelable obligations properly incurred prior to termination, to the extent funds are available and at the discretion of the Department.

If the Grantee shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or violate any of the covenants, agreements, or stipulations of this Agreement, the Department shall have the right to terminate this Agreement by giving written notice to the Grantee of such termination and specifying the date thereof.