

**CHITTENDEN COUNTY REGIONAL PLANNING COMMISSION
IN ITS CAPACITY AS BASIN 5 CLEAN WATER SERVICE PROVIDER**

MASTER AGREEMENT FOR SUBGRANT TO

AGREEMENT # CWSP-2023-xxxx

1. **Parties:** This is an Agreement for services between the **Chittenden County Regional Planning Commission**, a public body formed by its member municipalities as enabled under 24 V.S.A. 4341, with principal place of business at 110 West Canal Street, Suite 202, Winooski, Vermont 05404-2109, (hereinafter called “CCRPC”) and **NAME OF ORGANAZATION OR MUNICIPALITY** with its principal place of business at **ADDRESS CITY, STATE ZIP** (hereinafter called “SUBGRANTEE”). Subgrantee is required by law to have a Business Account Number from the Vermont Department of Taxes.

2. **Subject Matter:** The subject matter of this Agreement is water quality improvement via non-regulatory projects in the Northern Lake Champlain Direct Drainages Basin (aka Basin 5) in the State of Vermont as envisioned by Act 76, the Clean Water Service Delivery Act. The CCRPC is the designated Clean Water Service Provider (CWSP) for Basin 5. SUBGRANTEE shall perform or cause to be performed, and timely deliver proposed services to the CCRPC, as developed cooperatively by the SUBGRANTEE in consultation with the CCRPC, the Vermont Department of Environmental Conservation and the Basin 5 Water Quality Council. These services may be any for any number of tasks for Project Phases and Project Types as typically outlined in the Calls for Request for Qualifications and Call for Applications as may be posted from time to time at <https://www.ccrpcvt.org/northern-lake-champlain-cwsp/> and as noted in Attachment A.

Once the Scope of Work has been determined and a cost for individual project, a Budget, has been developed and approved by the CCRPC and the Basin 5 Water Quality Council, a Task Order Agreement including Scope, maximum limiting amount, and duration shall be prepared and a notice to proceed shall be issued.

3. **Agreement Term:** The period of SUBGRANTEE’s performance shall begin on January 1, 2023, and end on December 31, 2025, with possible extensions through December 31, 2026, or through December 31, 2027, as allowed by Environmental Protection Rule Chapter 39 (Clean Water Service Provider Rule) and CWSP / Act 76 Guidance as promulgated by the State of Vermont. Agreement extensions will be based on performance for the prior term period and availability of funds.

4. **Source of Funds:** Primarily State DEC Water Quality Formula Restoration Grants

5. **Amendment:** No changes, modifications, or amendments in the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the CCRPC and SUBGRANTEE.

6. **Procurement:** A Subgrantee may propose to use Subcontractors to provide professional services such as engineering, ecological design, outreach, etc. to assist with discrete project phases as long

as that Subcontractor is competitively procured consistent with Act 76, the Act 76 Rule and DEC guidance. For convenience, the CCRPC has prequalified several engineering/consulting firms to assist the CCRPC and its Subgrantees with carrying out projects in Basin 5. Subgrantees may solicit quotes from this list of pre-qualified firms and/or from other firms when developing project applications to bring to the CCRPC and the Basin 5 Water Quality Council for consideration.

When a subgrant is awarded to the SUBGRANTEE for completion of one or more phases at a project location, the SUBGRANTEE must, either prior to or after submission of a grant proposal to the CCRPC, seek proposals for any proposed subcontractors such as engineers, designers, etc. (other than for Construction) from at least three potential firms, either from these pre-qualified CWSP contractors or the business community. After selection, that contractor may continue to work for the SUBGRANTEE on further phases through construction/implementation of that clean water project provided that their costs are generally consistent with standard costs (as may be adjusted by inflation and market conditions) as identified by the Secretary of the Agency of Natural Resources as noted in Act 76 and as long as the CCRPC and/or its Subgrantee who is managing the project is satisfied with their work. When a Subgrantee is soliciting bids for Construction Services to physically install/implement a water quality project, the Subgrantee must competitively procure those services consistent with DEC Guidance.

Additionally, subgrantees shall abide by the following additional requirements:

- purchasing of goods shall require the solicitation of at least two different quotations, except when purchasing items valued at \$1,000.00 or less;
- records related to the procurement of services shall be retained for the term of the contract plus three years;
- records related to the procurement of goods shall be retained for one year after the audit covering the period of purchase of those goods;
- procurement of a good or category of goods totaling \$15,000.00 or greater from one vendor in one year shall be by written contract, and
- equipment and other durable assets purchased shall be maintained.

7. Cancellation: This Agreement may be cancelled by either party by giving written notice at least fifteen (15) days in advance.
8. Attachments: This Agreement consists of fourteen (14) pages including the following attachments which are incorporated herein:
 - Attachment A – Scope of Work for each topic area.
 - Attachment B - Payment Provisions and Cost Proposal
 - Attachment C - Standard State Provisions for Contracts and Grants
 - Attachment D – Other Contract & Subgrant Provisions

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

CHITTENDEN COUNTY
REGIONAL PLANNING COMMISSION

NAME OF ORGANIZATION/MUNICIPALITY

Signature: _____

Signature: _____

Name: _____

Name:

Title: CHAIR

Title:

Date: _____

Date: _____

ATTACHMENT A

SCOPES OF WORK FOR EACH TOPIC AREA MAY INCLUDE

Project Phases

These descriptions are for illustrative purposes only. Formal descriptions operative in any subgrant shall be as determined by DEC.

A. Assessment/Identification

Sector-specific and multi-sector assessments follow established protocols to identify areas with the highest contributions of pollutants and recommend potential clean water project BMPs. Work includes landscape level assessments and field work, project identification, and project prioritization to target cost effective actions (e.g., SWMPs). Established assessment methodologies require the use of the tools and protocols developed and provided by the DEC. It is expected that assessment work will lead to a prioritized list of potential clean water projects to pursue.

B. Project Identification & Development

Project Identification includes Initial Development and Project Screening.

Initial development may consist of:

- Discussions in person, via phone, via email and via video with landowners of location of water quality projects, with subcontracted water quality engineering/consulting firms
- Describing the restoration or water quality improvement needs and objectives a project could address;
- Identifying site design considerations;
- Identifying natural resources constraints and anticipated permits;
- Identify potential roadblocks or impediments for the project, if applicable;
- Proposing next steps for the project, e.g., design/implementation steps (if applicable); providing rough cost estimate of project phases; identifying potential funding sources.

Project screening may include determining where projects:

- Meet eligible project types and standards, as established by the CWSP and DEC;
- Include only eligible expenses, as established by the CWSP and DEC;
- Are on land eligible to receive/benefit from CWSP funded projects, as determined by the CWSP and DEC;
- Do not adversely impact natural resources, or where projects will adversely impact natural resources, impacts are allowable, as determined by DEC.

C. Project Design

Project design activities vary by project type but typically include:

- Completion of 30% Preliminary Design and 100% Final Designs consistent with the Vermont DEC Clean Water Initiative Program (CWIP)

- Completion of draft applications for any required permits (e.g, wetlands, municipal zoning permit, etc.)
- Completion of cost estimates and draft bid documents
- Completion of draft operations & maintenance plan and agreement(s)
- Procurement and Oversight of subcontractors needed to complete design work such as engineering firms, wetland specialists, geoengineering, archeological, land surveyors, etc.
- Identification and preparation of deliverables, including plans and permits; and
- Documentation such as photos, plans, electronic files, etc.

Project design activities must be completed in accordance with the Department of Environmental Conservation's (DEC) CWIP funding policy and include all applicable milestones and deliverables.

D. Project Construction/Implementation

Project completion/implementation activities vary by project type but typically include:

- Review of bids for construction/implementation
- Regular oversight of firms such as construction firms, organizations or individuals physically engaged in the construction/implementation of a water quality improvement project
- Preparation and/or review of as-built plans
- Documentation such as photos, plans, electronic files, etc.
- Sign-off (punch list review) of work completed by subcontracted construction firms

Project development and implementation activities must be completed in accordance with the DEC CWIP funding policy and include all applicable milestones and deliverables. Completed projects also must have an operation and maintenance plan and agreement in place, signed by responsible party(ies). The operation and maintenance plan and agreement must allow for ongoing independent verification in addition to monitoring, maintenance, and repairs.

Anticipated most common Project Types include:

- restoration/reconnection & protection of floodplain, river corridor and/or wetlands
- forestland and forest road best management practices (BMPs),
- riparian and lakeshore corridor protection, stabilization/restoration and tree plantings
- Natural woody buffers associated with riparian, lakeshore, and wetland protection and restoration
- conservation easements (river corridor, wetland buffer, etc.)
- Sub-jurisdictional practices related to developed lands
- traditional stormwater treatment and road project BMPs may also be applicable if reducing phosphorus beyond regulatory requirements
- Forestry projects that provide water quality protection and restoration beyond the requirements of the Department of Forests, Parks, and Recreation Acceptable Management Practices
- Projects on agricultural land if the farm in question does not meet the minimum eligibility criteria for the Required Agricultural Practices to apply.
- Natural resource restoration projects on a jurisdictional farm if confirmed by the VT Agency of Agriculture

ATTACHMENT B
PAYMENT PROVISIONS & COST PROPOSAL

The CCRPC agrees to compensate the SUBGRANTEE for services performed up to the maximum amounts stated below provided such services are within the scope of the agreement and are authorized as provided for under the terms and conditions of this agreement.

General. The CCRPC and the SUBGRANTEE will develop a cost for each project based on the scope of work as mutually agreed upon, and using hourly rates, overhead rates, and fees in alignment with those submitted by the SUBGRANTEE in response to RFQs and Calls for Proposals as may be posted at <https://www.ccrpcvt.org/northern-lake-champlain-cwsp/#funding> . All costs necessary to carry out the activities described in Attachment A, are to be determined by actual cost records kept by the SUBGRANTEE and any contractors/subcontractors retained by the SUBGRANTEE in accordance with the provisions of this Agreement, the cost principles established by 2 CFR Chapter I & Chapter II, Part 200 (OMB Uniform Guidance, effective 12/26/14), and are subject to review under the Single Audit Act of 1984. The total of such payments made shall be adjusted to conform to the determination made in such final audit in accordance with these provisions.

- B. Payment Procedures. The CCRPC shall pay, or cause to be paid, to the SUBGRANTEE progress payments which may be monthly or as otherwise agreed to by the parties for actual costs incurred as determined by using cost records for each Task and expense line items such as labor, benefits and direct and indirect costs of the required services covered by this Agreement. Requests for payment shall be accompanied by progress reports and be made directly to the CCRPC, for all work. Request for payment for sub-consultant activities shall be included with the SUBGRANTEE's submittals and will be documented separately.

The CCRPC shall pay for all approved services, expenses and materials accomplished or used during the period of this Agreement, and only that effort will be included on invoices under this Agreement.

The above payments shall be made promptly in accordance with applicable STATE and Federal regulations. The CCRPC shall seek to make payments within sixty (60) days of receipt of an invoice from the SUBGRANTEE.

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

The completion of the Agreement is subject to the availability of funds.

Written reports delivered under the terms of this Agreement shall be printed using both sides of the page whenever practical.

Payment must be requested using an invoice showing the name of project, period in which work is completed, amount billed for the period of work completed, amount billed to date and balance by task. Progress Reports must be submitted with each invoice.

Invoice and supporting documentation shall be submitted electronically to Dan Albrecht, Senior Planner at dalbrecht@ccrpcvt.org and also to Forest Cohen, Senior Business Manager at fcohen@ccrpcvt.org.

In the event of a multi-year or overlapping fiscal year contract, all expenses incurred in a given fiscal year must be billed in that fiscal year in order to qualify for reimbursement.

All invoices must include the certification of expense clause:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

Communicating & Acknowledging Funding Support: Written publications must include the following statement: “This project is supported by a grant from the Vermont Agency of Natural Resources Clean Water Initiative Program” or similar language as directed by CCRPC. Publications from municipalities or organizations receiving CCRPC funds include press releases, media interviews, final reports and events.

Attachments C & D are provisions that flow down from CCRPC’s Agreement with the State of Vermont to the SUBGRANTEE, and therefore become a part of this Agreement, as applicable. Should any of the provisions be contradictory or in conflict with another, the provisions flowing down from the specific funding source from CCRPC’s Agreement shall be primary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

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

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

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

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

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State

under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

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

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

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

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

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

16. Taxes Due to the State:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

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

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

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

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

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

the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

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

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

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

(End of Standard Provisions)

**ATTACHMENT D
OTHER CONTRACT & SUBGRANT PROVISIONS**

1. **Cost of Materials:** SUBGRANTEE will not buy materials and resell to the State at a profit.
2. **Work Product Ownership:** Upon full payment by the State, all products of the SUBGRANTEE's work, including outlines, reports, charts, sketches, drawings, artwork, 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 SUBGRANTEE.
3. **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 SUBGRANTEE under this grant agreement shall be approved/reviewed by the State prior to release.
4. **Ownership of Equipment:** Any equipment purchased by or furnished to the SUBGRANTEE by the State under this grant agreement is provided on a loan basis only and remains the property of the State.

All property acquired by SUBGRANTEE, partially or wholly funded under this Agreement, is to benefit the public by providing consulting services. SUBGRANTEE is a trustee of said property and acknowledges that State retains a controlling interest in all such property throughout its useful life. Title to vehicles, real property, and other property with an acquisition cost of \$5,000.00 or more per item continues to vest in State until State relinquishes its property rights in writing after the expiration of the useful life of said property. The determination of the useful life of property is solely the decision of the Administrator acting for State and shall be consistent with State guidance.

5. **SUBGRANTEE's Liens:** SUBGRANTEE will discharge any and all contractors' or mechanics' liens imposed on property of the State through the actions of subcontractors.
6. **Davis-Bacon Act:** The SUBGRANTEE 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.
7. **Health Insurance Portability and Accountability Act (HIPAA):** The confidentiality of any health care information acquired by or provided to the independent SUBGRANTEE shall be maintained in compliance with any applicable State or federal laws or regulations.
8. **Title VI Nondiscrimination Statement:** The State ensures compliance with Title VI of the Civil Act of 1964; 49 CFR, part 21; related statutes and regulations to the end that no person shall be excluded from participation in or be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the U. S. Department of Transportation on the grounds of race, color, national origin, gender, age, or disability.
9. **Drug Free Workplace:** As an employer, the SUBGRANTEE is responsible for maintaining safe, efficient working conditions for its employees by providing a drug free workplace. Therefore, employees shall not engage in the unlawful manufacture, distribution, possession or use of controlled substances (drugs) on the job or on any State work site.

An employee who is under the influence of any drug on the job may pose serious safety and health risks not only to the user but to co-workers and the general public at large.