

## PRIMARY CONTRACT

### For Indefinite Delivery/Indefinite Quantity Preventive Maintenance Services

**Parties.** This is a Primary Indefinite Delivery/Indefinite Quantity (IDIQ) contract for preventive maintenance and repair services, including necessary equipment and materials, in the categories of paving, surface treatment, bridge, large culvert repair, roadway repair, and right-of-way clearing between the State of Vermont, Agency of Transportation (hereinafter “VTrans”), and \_\_\_\_\_ (hereinafter “Contractor”), with its principal place of business in \_\_\_\_\_. Contractor’s form of business organization is \_\_\_\_\_. It is the Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

**Subject Matter.** The subject matter of this contract is Indefinite Delivery/Indefinite Quantity (IDIQ) services for preventive maintenance and repair, including necessary equipment and materials in the categories of paving, surface treatment, bridge repair, large culvert repair, roadway repair, and right-of-way clearing, to the State’s transportation system. Details of the services to be provided by the Contractor are described in Attachment A.

**Maximum Amount.** In consideration of the services to be performed by Contractor under this Primary IDIQ Contract, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a maximum limiting amount of \$\_\_\_\_\_.

The maximum is not a guaranteed amount, but represents an absolute maximum if Contractor were to compete for and successfully win and complete all Task Orders for the work-type and region covered by this Contract.

**Contract Term.** The contract term is three years, with VTrans having the option, in its sole discretion, to extend for two additional terms of one year each. The initial term will begin on \_\_\_\_\_ and end on \_\_\_\_\_, with specific dates of work as authorized by individual task orders placed by the State under this contract.

**Prior Approvals.** If approval by the Attorney General’s Office or the Secretary of Administration is required (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

- Approval by the Attorney General’s Office            is required.
- Approval by the Secretary of Administration        is required.
- Approval by the CIO/Commissioner DII              is not required

**Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

**Cancellation.** This contract may be canceled by either party by giving written notice at least 30 days in advance.

**Attachments.** This contract consists of the following attachments, which are incorporated herein:

Attachment A: Scopes of Work

Attachment B: Payment Provisions & Rate Schedule

Attachment C – Standard State Provisions for Contracts and Grants (revised July 1, 2016)

Attachment D – Other Provisions

Attachment E – Required Contract Provisions for Federal-Aid Construction

Attachment F – Standard Federal EEO Specifications

Attachment G – VAOT Contractor Workforce Reporting Requirements

Attachment H – *LINK ONLY* Wage Rates for Federal-Aid Projects (See <http://vtranscivilrights.vermont.gov/> for the latest wage rates)

Attachment I – Vermont Minimum Labor and Truck Rates

Attachment J – *LINK ONLY* WBE/DBE Registry (See <http://vtranscivilrights.vermont.gov/> for the latest Registry)

Attachment K – Disadvantaged Business Enterprise (DBE) Policy Contract Requirements

Attachment L – Certification for Federal-Aid Contracts

Attachment M – Debarment and Non-Collusion Affidavit

Attachment N – Contractor’s EEO Certification Form

Attachment O – Workers Classification Compliance Requirements (Self and Subcontractor Reporting)

Attachment P – Consultant and Sub-Consultants Information Form

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

STATE OF VERMONT  
Agency of Transportation

CONTRACTOR:  
XXXXXXXXXXXXXXXXXXXXXXXXXX

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

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

Name: Joe Flynn

Name: \_\_\_\_\_

Title: Secretary of Transportation

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2017

Date: \_\_\_\_\_, 2017

## ATTACHMENT A

Contractor has been selected for this Primary Contract, for specific subcategories of subject-matter work, and region(s), as specified below. Regions are as detailed on the map at the end of this Attachment A.

Work Type	Northwest Region (NW)	Northeast Region (NE)	Southwest Region (SW)	Southeast Region (SE)
Paving				
Surface Treatments				
Bridge Repair				
Large Culvert Repair				
Roadway Repair				
ROW Clearing				

Work types are as detailed at the descriptions at the end of this Attachment A, in sub-parts:

### **A-1 Paving**

### **A-2 Surface Treatments**

### **A-3 Bridge Repair**

### **A-4 Large Culvert Repair**

### **A-5 Roadway Repair**

### **A-6 Right- of-Way Clearing**

### **FOR ALL ACTIVITIES:**

Traffic Control shall either be the responsibility of the Contractor or of VTrans depending on the nature and/or duration of the work effort. VTrans will advise the Contractor as part of the Task Bid Request regarding the responsibility for providing Traffic Control. Part 6 (Temporary Traffic Control) of the 2009 Edition of the Manual on Uniform Traffic Control Devices (MUTCD) ([mutcd.fhwa.dot.gov/kno\\_2009r1r2.htm](http://mutcd.fhwa.dot.gov/kno_2009r1r2.htm)) establishes the traffic control standards and guidelines for street and highway maintenance operations. Traffic Control for bridge and culvert repair operations, shall comply with Chapter 6H of the MUTCD whenever possible. The following figures and associated notes from the MUTCD, in conjunction with VTrans Standard Sheets T-1, T-10, T-11, T-12, T-13, T-15 and T-17, found at <http://vtrans.vermont.gov/cadd/downloads> and will generally govern the various traffic control needs for bridge and culvert repair: Figure 6H-1 (Work Beyond the Shoulder), Figure 6H-6 (Shoulder Work with Minor Encroachment), Figure 6H-10 (Lane Closure on Two-Lane Road Using Flaggers), and Figure 6H-33 (Stationary Lane Closure on Divided Highway).

The Contractor shall be responsible for providing all signs, barricades, or other necessary traffic control devices. All traffic control signs shall be fabricated with ASTM Type VI and type VII sheeting (high intensity encapsulated lens) as a minimum and shall be consistently in good to excellent condition.

Unless protected by guardrail or other positive barriers, signs shall be erected on yielding or breakaway supports that meet the requirements of NCHRP Report 350 or of MASH. (Payment for Traffic Control equipment shall be subsidiary to Support Equipment.) See:

[http://safety.fhwa.dot.gov/roadway\\_dept/policy\\_guide/road\\_hardware/nchrp\\_350/](http://safety.fhwa.dot.gov/roadway_dept/policy_guide/road_hardware/nchrp_350/).

**ATTACHMENT B  
PAYMENT PROVISIONS**

The Contractor shall furnish the required equipment, operators and other employees to the State at the rates or for a lump sum amount agreed upon by the Contractor and the State's authorized representative for each Task Order

Should mobilization apply, a one-time charge for transporting equipment to and from the work site may be invoiced and listed as a separate line item. Equipment subsequently moved to and from the work site for the convenience of the Contractor will not be considered for reimbursement.

The State will not be responsible for additional expenses. All overhead costs, including expenses, lodging, meals, etc., must be incorporated into the Contractor's hourly rate.

Contractor will submit a bill or invoice to the District Office in which the work was performed every two weeks unless otherwise directed by the representative of the State. Invoices submitted by the Contractor shall identify:

- the contract number under which the work is being performed,
- the District or HQ Unit that work was being performed in
- any project number(s) assigned by the representative of the State.

Submit the invoices to the district or HQ Unit that coordinated the project:

District 1 359 Bowen Road Bennington VT 05201	District 2 870 US Rte. 5 Dummerston, VT 05301	District 3 61 Valley View, Suite #2 Mendon, VT 05701
District 4 221 Beswick Drive White River Jct., VT 05001	District 5 PO Box 168 Essex Jct., VT 05453	Headquarters 2178 Airport Road, Unit A Barre, VT 05641
District 7 1068 US Rte. 5, Suite 2 St. Johnsbury, VT 05819	District 8 680 Lower Newton Road St. Albans, VT 05478	District 9 4611 US Rte. 5 Newport, VT 05855

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

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

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

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

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

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

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

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party’s indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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

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

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

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

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

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

Premises - Operations

Products and Completed

Operations Personal Injury

Liability Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

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

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

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

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

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

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

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

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

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

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

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

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

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

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

**16. Taxes Due to the State:**

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

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

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

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

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



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

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

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

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

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

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

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

**23. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

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

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

**26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force

Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

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

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

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

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

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

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

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

(End of Standard Provisions)

## ATTACHMENT D

### OTHER PROVISIONS

#### **Task Order Award.**

VTrans will issue Task Bid Requests (TBR) under this Primary Contract to Primary Contract holders inviting them to submit Task Proposals on specific projects that are within the scope of their Primary Contracts. Task Orders awarding the projects and authorizing the commencement of the work will be awarded to the lowest priced responsive and responsible bidder. Contractors may commence work on a Task Order as soon as the Task Order has been fully signed by both the Contractor and VTrans.

TBRs will include, among other specifics regarding the project, the location, type of work, type of pricing sought, Task Order-specific terms, and the deadline by which the Contractor must submit a Task Proposal. VTrans reserves the right to withdraw the Task Order and re-compete it or have work performed and completed by other means.

VTrans reserves the right to award contracts for services described in Attachment A to entities outside the pool of Primary Contract holders when deemed necessary to meet the needs of the State. Additionally, at the Task Order level, VTrans also reserves the right to award work among Primary Contract holders by means other than those detailed in this contract when deemed necessary to meet the needs of the State, including, but not limited to, emergency situations. For example, in an emergency, VTrans may limit competition or make a sole source award against Primary Contracts.

Federally-required provisions set forth in Attachment F will apply when federal funding is part of a Task Order. Each Task Bid Request will indicate whether those federal provisions do or do not apply to the project.

#### **Modifying the Contractor Pool.**

To maintain healthy competition, to be inclusive of new contractors who may enter the field of work during the span of the Primary Contracts, and to replace contractors if needed over the duration of the Primary Contracts, VTrans reserves rights as follows:

ON-RAMP PROCEDURES: VTrans reserves the right to reopen competition to add Primary Contractors to the IDIQ contractor pool by issuing additional RFPs during the original and optional Primary Contract periods. The evaluation and selection of awardees for any on-ramp will be same as the evaluation and award criteria used for the initial Primary Contract awards. Any new awardees will compete going forward with any existing or remaining contractors for all Task Orders in the applicable competition pool. Any additions resulting from on-ramps will not impact the contract maximum ceiling for the work type. The period of performance for new awardees will not exceed the overall maximum term of the original Primary contract, including extension options. State will not consider unsolicited requests for addition to the Primary Contract.

OFF-RAMP PROCEDURES: In addition to any other means of methods of termination provided for in this contract, VTrans reserves the right to terminate Primary Contracts at any time when it determines that a Contractor has failed to deliver adequate performance, or demonstrated inadequate availability. VTrans will assess Contractor performance at the Primary Contract level at least annually via

Contractor Performance Assessment in addition to evaluations at the completion of individual Task Orders. No Primary Contract will be terminated via these off-ramp procedures without documented unsatisfactory performance, or a pattern of unavailability to perform work without an opportunity to respond.

**CROSS-RAMP PROCEDURES:** VTrans reserves the right to issue TBRs to Primary Contract holders in different work types and regions from those covered by their Primary Contract. Cross-Ramp procedures will be used on a case-by-case, as needed basis, and should generally be an exception. Longer-term adjustments to regional contractor pools will be accomplished by utilizing the on-ramp procedure

**TASK ORDER DURATION:** It is intended that no Task Order will have a completion date after the expiration of the applicable Primary Contract (including extensions of a Primary Contract, if actually extended). In rare and exceptional circumstances where it might be mutually desired to have a Task Order extend beyond the term of a Primary Contract, special documentation will be needed, overseen by VTrans' Contract Administration and authorized by the Secretary of Transportation and VTrans' CFO.

**PERFORMANCE EVALUATIONS:** At the conclusion of each Task Order or when the Contractor's performance is considered less than satisfactory, VTrans will complete a Contractor's performance evaluation. The evaluation will take into account all aspects of the Contractor's performance. The Contractor will be provided a copy of the performance evaluation and an opportunity to discuss the evaluation. VTrans will maintain copies of evaluations for use in future procurement selections.

### **Pricing.**

Depending upon the requirements set forth in each TBR, the Contractor will provide one of the following in the Contractor's Task Proposal response to a TBR:

- a) a lump-sum price;
- b) a price for each line item in the schedule (when optional items are used in the TBR); or
- c) a technical proposal and a separate price proposal.

### **Declining to compete for a particular Task Order.**

Contractors are not required to submit a proposal for each Task Order, however, the Contractor must give written notification the Contractor's intent to not submit a Task Proposal in response to a particular TBR. Recurrent unavailability to bid on Task Orders may cause a Contractor to be subject to off-ramp procedures.

### **Insurance.**

Contractors will be required to furnish proof of insurance meeting VTrans' requirements at the time that Contractors receive a Primary Contract, and maintain active coverage throughout the terms of the contract. VTrans may also require that a contractor provide confirmation that all required insurance coverages are still in effect prior to receipt of a Task Order award. The Contractor is hereby notified that in the event of a discrepancy between the stated insurance requirements of Bulletin 3.5 Attachment C: Standard State Provisions for Contracts and Grants and those of Subsection 103.04 of the Standard Specifications for Construction, the requirements of Subsection 103.04 of the Standard Specifications for Construction shall govern.

### **Railroad Protective Liability (where applicable).**

When the contract requires work on, over, or under the right-of-way of any railroad, the Contractor shall provide and file with the Agency, with respect to the operation that it or its subcontractor perform under the State of Vermont Agency of Transportation contract, Railroad Protective Liability Insurance for and on behalf of the railroad as named insured, with the State, the Railroad, and Municipalities, when applicable, named as additional insured, providing coverage limits of:

- (1) Not less than \$2,000,000.00 for all damages arising out of any one accident or occurrence, in connection with bodily injury or death and/or injury to or destruction of property; and
- (2) Subject to that limit per accident, a total (or aggregate) limit of \$6,000,000.00 for all injuries to persons or property during the policy period.

### **Workers Compensation Coverage.**

Projects assigned under this contract that are \$250,000.00 or more, shall be required to submit the Workers' Compensation; State Contracts Compliance Requirement Self Reporting form for both the Contractor and any and all subcontractor(s) working on the project.

VTrans, in accordance with Section 32 of Act No. 54 of 2009, and for projects costs exceeding \$250,000.00 required bidders comply with the following provisions and requirements of Workers' Compensation; State Contracts Compliance Requirement:

- (a)(3) For construction and transportation projects over \$250,000.00, a payroll process by which during every pay period the Contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that Contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the jobsite, and similar information for the subcontractors regarding their subcontractors shall also be provided to the Department of Labor and to the Department of Banking, Insurance, Securities, and Health Care Administration, upon request, and shall be available to the public.

### **Davis-Bacon Wage Rates.**

For each specific work assignment exceeding \$2,000.00 that involves work on federal-aid projects, the Contractor shall pay Davis-Bacon Act wage rates in accordance with the Attachment F and shall submit necessary payroll sheets to the representative of the State.

### **Federal Contract Provisions.**

For each work assignment that involves work on a federal aid project with a project cost of \$10,000.00 or more, the Contractor shall adhere to all federal regulations of Attachments E and F.

**Bonds.**

If the awarded work or services to be performed is a sum greater than \$100,000, then the Contractor selected to perform the Task Order will be required to furnish bonds, in accordance with 19 V.S.A. § 10. The Bonds given by the Contractor shall be a Compliance Bond in a sum equal to one-hundred per centum (100%), and a Labor and Materials Bond in the sum equal to one-hundred per centum (100%) of the total task order price of the work unless waived by the Secretary of Transportation. Bonds will be addressed at the Task Order level.

**Buy America.**

When a Contractor is asked to supply materials as part of their lump sum bid proposal for a federal-aid project, the Contractor shall adhere to the requirement of Buy America Provisions of the 2011 Standard Specifications, Section 107.22.

**Cargo Preference Act Compliance (if applicable).**

The Contractor/recipient/subrecipient is hereby notified that the Contractor/subcontractor(s)/recipient(s) are required to follow the requirements of 46 CFR 381.7(a)-(b), if applicable. For guidance on requirements of Part 381 – Cargo Preference Requirements – U.S.-flag vessels, please go to the following web link:

<https://www.fhwa.dot.gov/construction/cqit/cargo.cfm>.