

March 15, 2022

Request for Proposals (RFP): **Archaeological Consulting Services 2022**

The Project Delivery Bureau of the Policy, Planning and Intermodal Development Division of the Vermont Agency of Transportation, hereinafter referred to as VTrans, is seeking contractor services to undertake any necessary archaeological work on a variety of projects ranging from an Archaeological Resource Assessment (ARA) also referred to as a Resource Identification, through a Phase 3 study (data recovery) as defined in this Scope of Work (SOW) and The Vermont State Historic Preservation Office's Guidelines for Conducting Archaeology in Vermont, updated in 2017. The required services include historic and pre-contact (Native American) archeological resource reviews and knowledge of related fields that may assist and/or relate to information on archaeology. Knowledge and information related to and supporting archaeology is commonly obtained from associated work in socio-cultural anthropology including indigenous American populations, history, oral history, archival studies, document research, landscape studies, botany (floral analysis), faunal analysis including zoology and zoo archaeology, human osteology, soil science, remote sensing, geology (structural & physical), surficial geology, geomorphology (Pleistocene & Holocene), and geography (locational & spatial analysis).

This RFP will result in multiple awards.

All work will be accomplished in accordance with the following:

- Scope of Work (SOW) dated March 8, 2022;
- Attachment C: Standard State Provisions for Contracts and Grants dated December 15, 2017
- 2020 General Terms and Conditions for Contracts and Services
- 2018 Federal Terms and Conditions Services (Non-Construction)

all of which are attached hereto, in addition to all applicable local, state and federal regulations.

Prequalification is not required in order to submit a proposal for this RFP.

All questions related to this RFP shall be forwarded to **Caryn Pletzer, AOT Contract Administration, in writing**, by e-mail at caryn.pletzer@vermont.gov. All such questions and requests shall be received **no later than 2:00 p.m. on Tuesday, March 29, 2022**. VTrans will not be bound by any oral communications. All questions or requests for clarification received will be documented and answered after this date.

Communication with other VTrans personnel regarding this RFP is prohibited and may result in the rejection of your proposal.

Proposers' Conference: There will **not** be a mandatory or optional pre-bid meeting.

Addendums(s) / Modifications. In the event that it becomes necessary to revise, modify, clarify, or otherwise alter this RFP, including VTrans' responses to questions and requests for clarification, such addendum(s)/modification(s) shall be posted to the VTrans Contract Administration website.

IT IS THE PROPOSER'S RESPONSIBILITY TO OBTAIN ANY RFP MODIFICATIONS ISSUED.

They will be posted on the VTrans Contract Administration website at:

<https://vtrans.vermont.gov/contract-admin/bids-requests/services>

Reservation of Rights. All proposals become the property of VTrans upon submission. The cost of preparing, submitting and presenting a proposal is the sole expense of the Proposer. Unselected proposals shall be securely disposed of at VTrans' discretion. VTrans reserves the right to reject any and all proposals received as a result of this solicitation, to negotiate with any qualified source, to waive any formality and any technicalities or to cancel this RFP in part or in its entirety if it is in the best interest of VTrans. This solicitation of proposals in no way obligates VTrans to award a contract.

Exceptions to Terms and Conditions. The proposer must state in the business proposal any exceptions taken to the terms and conditions in this RFP. For each exception the proposer shall identify the term or condition, state the reason for the exception, and provide any other information concerning the exception. Such exceptions, deviations or conditional assumptions may, however, result in rejection of the proposal as unresponsive. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State.

Multiple Award Anticipated. VTrans intends to select more than one (1) Contractor to perform these services under a primary contract. Each contract will contain a variety of specific services the Contractor will be awarded. VTrans will enter into contracts, with an initial term of two (2) years with the option of extending for two (2) additional one (1) year periods.

Maximum Amount. The maximum amount(s) for the contract(s) will be set at a level to permit a Contractor to be awarded all work assignments if they are judged to be the most qualified. Qualification Based Selection will be determined by experience, specialists' availability, required specialized equipment, capacity, creative and technical solution, and past performance. Award of a contract does not guarantee payment of any or all the maximum amount. Payment is based on products or services actually delivered or performed. The maximum amount for this contract does not guarantee that the Contractor will receive any work under the Contract.

Work Orders. VTrans may use several methods for determining and distributing work orders to contracted Contractors including but not limited to requesting technical proposals from more than one Contractor for comparison, requesting a proposal from a single Contractor, or requesting proposals addressing more than one project. Award of work orders will be a qualification based selection when the services are design in nature and federal funding is involved. Award of work orders will be a best value selection when the services are not design in nature and federal funding is involved. Best value selection will be used for all services that are 100% state funded, regardless of service type.

All Work Order Requests that contain federal funding other than Federal Highway Association (FHWA) such as Federal Railroad Administration (FRA), Federal Aviation Administration (FAA) or other federal funding may contain special provisions required for that federal funding and/or the particular project. By returning a work order proposal for that project, you are indicating that you understand and will abide by any additional provisions included in the Work Order Request/Authorization.

Primary Contract holders shall not enter into joint ventures with another Primary Contract holder in response to a second-tier solicitation (Work Order Request); nor shall it be permissible for a Primary Contract holder to include another Primary Contract holder as a subcontractor.

Contractors who are awarded work orders will report to the assigned VTrans Project Manager. Work will be performed primarily at project sites and municipalities throughout Vermont, as described in the work orders, and some meetings may be held at VTrans headquarters in Barre.

For sub-contractors not named in the proposal, utilization of sub-contractor personnel will require written approval by VTrans prior to the sub-Contractor performing any work under the contract. Please see additional information regarding this process under the sub-contractor section within the Proposal Technical Format and Content.

No work may be performed after the expiration date plus exercised extensions of the applicable Contract. In exceptional circumstances where it might be mutually desired to have work extend beyond the term of a Contract, written authorization will be needed, overseen by VTrans' Contract Administration, and authorized by the Secretary of Transportation, the Agency's Chief Financial Officer, other State Representatives as required and Federal oversight agencies as required. A formal amendment will be required for any such extension.

Confidentiality. All Proposals received will become part of the contract file and will become a matter of public record, and may be disclosed to the public in accordance with the Vermont Public Records Act, 1 V.S.A. § 315 et seq. If the proposal documents include material that is considered by the proposer to be proprietary and confidential under 1 V.S.A. § 315 et seq., the proposer shall submit a cover letter that clearly identifies each page or section of the proposal that it believes is proprietary and confidential. The proposer shall also provide in their cover letter a written explanation *for each marked section* explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the proposer if the identified material were to be released. **Additionally, the proposer must include a redacted copy of its response for portions that are considered proprietary and confidential.** Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response be marked confidential, and the State reserves the right to disqualify responses so marked.

Proposal Instructions – General

The quality of proposals and adherence to solicitation response requirements and/or restrictions are considered reflective of the manner in which the proposer could be expected to conduct business and will be given due consideration throughout the evaluation process.

Failure to provide all required information, or indications that the proposer did not conform to all terms as set forth in the RFP and attachments may make the offer non-responsive and may result in the elimination of the proposer from further consideration for award.

Proposals or unsolicited revisions submitted after the specified due date and time will not be accepted and will be securely disposed of.

Required Electronic Submittal Information:

Proposals will be received electronically via an FTP site. In order to upload your proposal, you must obtain a user account. This account will be provided when Contract Administration receives your request via e-mail. Please submit your request for a user account by e-mailing the single point of contact listed above. Your subject should state “**FTP Account Proposal Submit Request for Archaeological Consultant Services 2022**”. You will then receive guidance on uploading your proposal and a user account will be provided by separate e-mail(s). Please submit your request as soon as possible and no later than four (4) business days before the RFP due date to ensure there is ample time to set up the user account(s).

When submitting your proposal(s) please use the following naming convention:
ProposalType_CompanyName_RFP Title

- **TechnicalProposal_ABConsulting_ArchaeologicalConsultantServices2022**
- CostProposal_ABConsulting_ArchaeologicalConsultantServices2022
- FinancialInformation_ABConsulting_AracheologicalConsultantServices2022 This file will be uploaded directly to AOT Audit Section as these documents are considered confidential. You will receive a separate user account through AOT Audit when this document is required, and a user account is requested.

Submit your proposals to the Office of Contract Administration, Agency of Transportation, via the provided FTP site, prior to 2:00 P.M., on **Tuesday, April 12, 2022.**

Technical Proposal Format and Content

The proposal shall not exceed twenty-four (24) single sided or twelve (12) double sided pages. All pages that count toward the page limit shall be numbered consecutively. The pages shall be formatted as 8½” x 11” sheets. Font shall be size 12.

The twenty-four (24) pages shall include information as required below:

Proposal Substantive Content

In tabbed and labeled sections, please provide the following elements:

- A. **Cover Letter.** All proposer’s or their authorized representative shall prepare and sign a cover letter. Submission of the letter shall constitute a representation by the proposer that it is willing and able to perform the services described in the RFP and their proposal response. **This section counts toward the twenty-four (24) page limit.**
- B. **Technical Capability/Approach.** In this section the proposer must explain the proposer’s understanding of VTrans’ intent, objectives, and how the proposer proposes to achieve those objectives. The proposer must discuss the proposer’s experience, capabilities and plan for providing the described services, including any proposed approach to project management, strategies, tools and safeguards for ensuring performance of all required services, and any additional factors for VTrans’ consideration. **This section counts toward the twenty-four (24) page limit.**
- C. **Business and Management Structure.** Provide a description of the bidding organization’s size, background, and structure, and a list by name and title of management personnel. Indicate which management personnel will be responsible for the delivery of services under the contract and a description of how the organization’s resources will be applied. This section should provide clear information as to the lines of communication and how the Business ensures Quality Control & Quality Assurance. Include information as to how Local, Regional and National Offices will coordinate to provide successful services. **This section counts toward the twenty-four (24) page limit.**
- D. **Organizational Chart.** Provide a one-page organizational chart of the Proposer’s team that notes the name and title of key individuals that are proposed to manage or perform tasks. This chart shall clearly indicate the lines of communication for problem resolution. The use of an 11x17 page is permitted, however ensure that the document has been scanned or saved appropriately so all information is included. You may utilize a separate text box to contain the phone number and e-mail of each person listed on the chart, but the text box must be located on the same page as the organizational chart. In the case of international or national firms, please provide an organizational chart of the local office that will be responsible for the delivery of services under the contract. **This section DOES NOT count toward the twenty-four (24) page limit.**

- E. **Key Personnel.** Identify the name and title of all personnel who will be assigned to provide professional services under this contract. Indicate any certifications or special licensing the individual holds that is pertinent. Include up to two-page resumes for each individual. **This section DOES NOT count toward the twenty-four (24) page limit.**

NOTE: The key personnel identified in the proposal are considered by VTrans to be essential to the work being performed under the contract. Prior to diverting any of the specified individuals into other programs, the Contractor shall notify VTrans in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made without VTrans' written consent.

F. **Subcontracts.**

A. Identify **all** subcontracts proposed, and provide the following information:

- (1) Company name of each sub-contractor, or individual name in the case of independent Contractors
- (2) Names of each sub-contractor principals and/or corporate officers
- (3) Resumes of each sub-contractor's key personnel who will be assigned to provide professional services under the contract, including certifications or special licensing for each; and
- (4) The types of work to be performed by each sub-contractor

This section DOES NOT count toward the twenty-four (24) page limit.

NOTE: Fully executed sub-agreements must be in place for each sub-contractor prior to the sub-contractor performing any work under this contract. Any changes to or the addition of new sub-contractors are subject to the same notification and approval procedures applicable to key personnel described above. Contractor must request changes or additions in writing to the Contract Manager. The request shall include justification for the change or addition, all required items such as resumes of the sub-contractor, a description of their services, any certifications or special licensing the individual holds that is pertinent. All sub-contractors that the proposer anticipates utilizing under the contract should be included with the initial proposal. Changes to sub-contractors and the addition of new sub-contractors should be the exception and be on a limited basis.

- G. **Past Performance.** Provide at least three (3) projects that detail past performance. The projects must be completed in the past five years or currently in process which are of similar size, scope, complexity and contract type or otherwise relevant to the work described in this RFP.

Proposer shall use the provided Past Performance and Reference Form.

The contact person must be able to speak knowledgably about the proposer's performance in both technical and business aspects. The contacts provided may be directly communicated with at VTrans discretion.

The technical proposal shall not include any quoted or summarized comments or recommendations from any in-state or out-of-state evaluations, records or reports of any kind.

VTrans reserves the right to discuss the Proposer's past performance with any VTrans employee who has had experience with the Proposer.

This section counts toward the twenty-four (24) page limit.

H. Sample Project

Provide a scope of work, schedule and cost estimate for the sample project that is included with this RFP in the Scope of Work, Appendix D. The scope must include the schedule and show a breakdown by staff-person, task, outreach, etc.

For deliverables, provide information as outlined in the Sample Project, Appendix D to the Scope of Work.

This section DOES NOT count toward the twenty-four (24) page limit.

The Sample Project does have its own specific page limit of 20 single sided pages or 10 double sided pages.

I. Price/Cost:

Complete the attached Hourly Classification Rate Schedule to provide fully burdened hourly rates for all classifications you anticipate utilizing under the Primary Contract. The classifications must be consistent with the key personnel and technical portions of your proposal.

The submitted rates will be in effect for the initial term of the Primary Contract, which is two (2) years. Rates can be revised during the exercise of the first option year and will be in effect for both of the 2 optional one-year periods.

This section DOES NOT count toward the twenty-four (24) page limit.

Required Certifications/Documents *Sections 1-6 DOES NOT count toward the twenty-four (24) page limit.
Section 7 counts toward the twenty-four (24) page limit.*

- 1. Completed Certification of Contractor / Consultant – fillable PDF provided**
- 2. Completed Certification Regarding Lobbying – fillable PDF provided.** If there is no lobbying activities, please indicate N/A on the second page and complete the firm information in section 11.
- 3. Debarment and Non-Collusion Affidavit – Form CA-91:** All proposers will be required to execute a sworn statement, certifying that the proposer has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.
- 4. Contractor's EEO Certification - Form CA-109:** The certification is required by the Equal Employment Opportunity regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by Contractors and proposed sub-contractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause.
- 5. Worker Classification Compliance Requirements (Self Reporting and Sub-Contractor Reporting) –** The form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.
- 6. Contractor and Sub-Contractor Information Form –** The form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.

7. Past Performance and Reference Forms – fillable PDF provided

Proposer's Cost Proposal

Submit one (1) separate and labeled (as noted above) PDF file, containing:

The Cost Proposal Form attached to this RFP as Attachment P.

Price/Cost

Actual price/cost for each project assigned under this contract will be determined at the work assignment level based on the approved Rate Schedule. For the purposes of determining the rates to be included in the Primary Contract, bidders must provide hourly rates per classification, for providing the necessary services as specified in the attached SOW. If there are multiple individuals in a classification, please calculate one rate per classification. The rates submitted shall be fully burdened rates. The classifications should be consistent with the information provided in your technical proposal. For sub-Contractors named in the proposal, include classification rates for all sub-Contractor personnel, for review and reasonableness. All sub-Contractors will be billed at cost.

The submitted rates in this proposal will be binding on the bidder for work at the work assignment level. The rates submitted and included in the Primary Contract will be in effect for the initial term of the Primary Contract, which is two (2) years. Rates can be revised during the initial amendment process for the option of extending for two (2) additional one (1) year periods. The revised rates will be in effect for the 2 optional years.

VTrans will use the submitted rates to evaluate cost reasonableness and realism in the award of the Primary Contract after the qualifications-based selection of the contractor(s) for Primary Contracts is completed.

Contractor Financial Information

Submit one (1) separate, labeled PDF file, containing:

A. Break Down of Rates

1. Provide the current direct hourly rates for the key individuals who may be utilized under this agreement grouped by classification titles. The list of individuals should be consistent with the information provided in your technical proposal.
2. Please provide a breakdown of all rates by classification title including: direct rate, overhead rate, profit and total for the key personnel identified in the cost proposal.

Example:

<u>Classification</u>	<u>Direct Rate</u>	<u>Overhead Rate</u> 150%	<u>Profit</u>	<u>Total</u>	<u>Overtime Premium</u>	<u>Overtime Total</u>
Biologist	\$40.00	\$60.00	\$8.00	\$108.00	n/a	\$108.00
Botanist	\$27.00	\$40.50	\$5.40	\$ 72.90	\$13.50	\$ 86.40
Other Specify	\$20.00	\$30.00	\$4.00	\$ 54.00	\$10.00	\$ 64.00

This is only an example. Please use this format to present your information.

3. VTrans considers profit as a negotiable item and caps the profit at 10%. Please notify all sub-Contractor(s) of the 10% cap.
4. **If there are multiple individuals in a class of labor, please calculate one rate per classification. Include an explanation and justification for the calculation method utilized in calculating that rate.**
5. The total (fully burdened) rate provided in this section shall match the total (fully burdened) rate per class of labor as submitted in the Cost Proposal.
6. Overtime Premium is for direct labor rates only. There is no mark up on overhead rate or profit as these items do not incur additional costs. The Overtime premium is for the ½ increase in the direct labor rate. If an employee is not paid an increase rate for overtime hours, then the overtime premium would not be applicable.

B. Financial Documentation

- 1) A completed Form AASHTO Internal Control Questionnaire (ICQ) for Consulting Engineers (for the prime Contractor), along with required financial statements and indirect cost schedules. The current AASHTO ICQ form can be found on the VTran's Audit page at <https://vtrans.vermont.gov/finance-admin/audit>
- 2) The financial information for the Proposer shall be for the most recently completed fiscal year.

If the Proposer has a completed AASHTO ICQ and current financials are on file already with the VTrans Audit Section, the Proposer does not need to resubmit for this RFP. Any Proposer wishing to verify their financial information should contact the VTrans Audit Section.

In accordance with 23 USC § 172 information supplied in compliance with the above financial requirements will be considered confidential.

Evaluation of Proposals

VTrans will award a contract in the best interest of the State. The selection will be a qualifications-based selection.

The selection panel is comprised of VTrans employees from varying Departments and Bureaus and in some cases external Stakeholders. The panel members may or may not be familiar with your company. With that in mind, it is important to provide detailed information regarding the evaluation criteria listed below.

The selection panel will evaluate proposals based upon the following factors and related sub-factors, which are of equal weight, unless noted otherwise.

1. Technical Capability/Approach (This section will be evaluated and rated at thrice (3x) the weight of the other sections)

The proposal clearly indicates how the proposer will deliver timely, high-quality, compliant and cost-effective services to meet VTrans' needs. Specifically, the proposal demonstrates:

- Demonstrate experience and ability with the various types of engineering services that are outlined in the SOW that may be requested by VTrans.
- Demonstrated innovation on projects and assignments similar to those types listed in the SOW.
- Ability to meet projects on time and within budget.
- Please describe your organization's digital capabilities, equipment and programs you currently work with such as GPS, Microstation, etc., and qualifications your staff has that will enable you to perform the work to the standard requirements for submission of digital data to VTrans as outlined in the Scope of Work. This includes the ability to conduct survey work, record sensitive areas or site features as well as submitting shape files and .dgn files.
- Please describe how your organization will meet workload demands and review timeframes from VTrans including demonstrating that you have adequate qualified staff to handle the potential for multiple assignments during the course of the field season.
- Please include a sample monthly report. The report should include project information and status including any tasks required of either the consultant or VTrans.
- Please describe your experience with various types of projects listing any creative approaches taken that were either necessary given the circumstances or that were above and beyond the minimum standards that improved the overall outcome of the project. This can be a type of approach in a project with a challenging situation or it can be an example of creative mitigation.

2. Business and Management Structure

- The proposal clearly demonstrates a sound organizational structure and management approach which indicate positive business ethics, clear lines of communication between the proposer's team and VTrans, active and continuing participation of senior executives, a focus on quality assurance and partnering.
- The proposal clearly demonstrates that the proposer has the resources and managerial capability to provide the required services in a timely, cost-effective manner.
- Please include your official mailing address and contact information including a list of current staff, phone numbers and email addresses. Please include a management plan with a brief bio of each individual, what role they serve in the organization and what tasks they will be responsible for within the role of fulfilling responsibilities to VTrans under this contract for Statewide Archaeological Services. Please include any and all potential sub-consultants on retainer as part of this list and what functions they will perform. Do not include resumes of individuals.
- Please include an organization chart showing all staff and management structure.

3. Key Personnel (This section will be evaluated and rated at twice (2x) the weight of the other sections)

- Proposer's proposed key personnel are sufficient in number, experience, and skill level, to provide high-quality professional services in a timely and cost-effective manner.

- Demonstrates commitment of key personnel to tasks/assignments.
- Key personnel meet the Secretary of the Interior’s Professional Qualifications Standards as specified in 36 CFR Part 61 and possess additional professional certification(s) and licensing required for the Scope of Work.
- Please describe all Key Personnel who will be responsible for conducting the primary archaeological review work for this contract and include years of experience, any areas of expertise, all pertinent qualifications, licenses, and other certifications and skills that clearly demonstrate their capabilities to meet the minimum standards under 36 CFR 800 Part 61.

4. Past Performance (This section will be evaluated and rated at twice (2x) the weight of the other sections)

The past performance evaluation will examine how the proposer’s past and present performance indicates the likelihood of successful completion of work under this contract. In conducting the past performance assessment VTrans may use data obtained by references provided and any other source.

5. Sample Project (This section will be evaluated and rated at thrice (3x) the weight of the other sections)

- Include a technical approach within your proposal for a theoretical assignment, as described in Appendix B, include pertinent examples of work performed by key personnel and sub-contractors.
- Provide a proposed schedule through completion of the theoretical assignment.
- Please identify all natural and cultural resources that may be present.
- Please see the attached sample project for details.

Evaluation Method

Ratings will focus on the strengths and weaknesses as demonstrated by the proposer’s proposal. Assigned ratings represent the consensus developed by the selection committee. Each criterion described above will be scored according to the following chart.

The maximum possible evaluation score is 12+4+8+8+12=44

Single Max Weight	Twice Max Weight	Thrice Max Weight	Overall Rating	Description
4	8	12	Exceptional	Indicates a proposal containing significant strengths with few to no weaknesses
3	6	9	Very Good	Indicates a proposal containing a number of strengths but also some weaknesses
2	4	6	Acceptable	Indicates a proposal containing some strengths but also some significant weaknesses
1	2	3	Unacceptable	Indicates a proposal that contains significant weaknesses that outweigh any strengths

The Contractor awarded a contract shall, upon notification of award, apply for registration with the Vermont Secretary of State's Office to do business in the State of Vermont, if not already so registered. The registration form may be obtained from the Vermont Secretary of State, 128 State Street, Montpelier VT 05609-1101. The telephone number is 800-439-8683. Registration can be completed online at www.vtsosonline.com/online . VTrans will not process the contract until the Contractor is registered with the Secretary of State's office.

The Contractor shall submit to VTrans a certificate of insurance showing that minimum coverages are in effect. The certificate must be submitted to the office of Contract Administration prior to execution of the agreement. ***No work may be performed for any VTrans contract and/or Notice to Proceed, including mobilization, without compliant insurance being on file at AOT Contract Administration.*** It is the responsibility of the Contractor to maintain current certificates of insurance on file with the State through the term of the contract.

Worker's Compensation: With respect to all operations performed, the Contractor shall carry worker's compensation insurance in accordance with the laws of the State of Vermont.

NOTE: In the case of out-of-state Proposers, the proposer's workers' compensation insurance carrier must be licensed to write workers' compensation for all work that will be conducted within Vermont and so noted on the Certificate of Insurance.

The Contractor shall sign the contract documents and return them to the Agency's Office of Contract Administration within fifteen (15) calendar days from the date of receipt. No contract shall be considered effective until it has been fully signed by all of the parties.

It is a condition of proposing under this RFP that, by submitting a proposal, the proposer accepts and agrees unconditionally that if the proposer in any way contacts, or attempts to contact, a member of the selection panel involved in the selection process for this RFP, either during or following the RFP process, with the aim of communicating about the selection process or outcome, then that proposer will be completely barred from receiving or performing such work of the type covered under the RFP for a period of 365 days from the date of that proposer's attempted contact with the selection panel member. The only valid point of contact for questions about the process or outcome is from Contract Administration and is specifically listed on the first page of the RFP.

After notification of award, proposers may request a debriefing. The debriefing will review the requesting proposers scores as well as strengths and weaknesses identified by the selection committee during their review. The debriefing process is a courtesy to the proposer and is not intended to provide information akin to that provided in discovery procedures applicable in civil litigation or to replace processes for requesting documents under the Vermont Public Records Act. Debriefing requests must be submitted in writing via e-mail to the sole point of contact within fourteen (14) calendar days of notification of award results. Please include the names and e-mail addresses of all employees of the proposer who wish to attend the debriefing.

Enclosures:

- Attachment A: Scope of Work (SOW) dated March 8, 2022
- Attachment B: Payment Provisions
- Attachment C: Standard State Provisions for Contracts and Grants dated December 15, 2017
- Attachment D: N/A – Left Intentionally Blank
- Attachment E: 2020 General Terms and Conditions for Contracts and Services
- Attachment F: 2018 Federal Terms and Conditions Services (Non-Construction)
- Attachment G: Certification for Federal Aid Projects (DOT Form 272-040 EF)
- Attachment H: Title VI Assurances – DOT Standard Title VI Assurances and Non-Discrimination Provisions (DOT 1050.2A) – Assurance Appendix A and Assurance Appendix E
- Attachment I: Certification of Contractor / Consultant
- Attachment J: Certification Regarding Lobbying
- Attachment K: Debarment and Non-Collusion Affidavit (Form CA-91)
- Attachment L: Contractor’s EEO Certification (Form CA-109)
- Attachment M: Worker Classification Compliance Requirements (Self-Reporting and Subcontractor Reporting)
- Attachment N: Past Performance and Reference Forms
- Attachment O: Contractor and Sub-Contractor Information Form
- Attachment P: Cost Sheets
- Attachment Q: N/A – Left Intentionally Blank

Link for: AASHTO Internal Control Questionnaire (ICQ)

<https://vtrans.vermont.gov/sites/aot/files/portal/documents/other/AASHTO%20ICQ%20incl.%20Indirect%20Cost%20Certification%20complete.pdf>

ATTACHMENT A
SCOPE OF WORK
Archaeological Consulting Services 2022
March 8, 2022

I. INTRODUCTION

Federal and state laws require the Vermont Agency of Transportation (VTrans) to take into consideration in the earliest stages of planning the potential effect of projects on historic and archaeological properties that are listed on or eligible for inclusion in the National Register of Historic Places (NRHP). VTrans will hire a professional consultant(s) for a **two-year term with the potential for a two-year extension** to undertake any necessary archaeological work on a variety of projects ranging from an Archaeological Resource Assessment (ARA) also referred to as a Resource Identification, through a Phase 3 study (data recovery) as defined in this Scope of Work (SOW) and The Vermont State Historic Preservation Office's Guidelines for Conducting Archaeology in Vermont, updated in 2017. Phase 3 studies are less frequent but can be costly and therefore, some Phase 3 studies may be conducted through a separate Sole Source Contract if deemed necessary. The Statewide Archaeological Consultant (SAC) will be expected to submit a summary of the project to date along with a draft scope of work and cost estimate for the Phase 3 work. A separate contract may be set up for this work outside of the normal contract.

The required services include historic and pre-contact (Native American) archeological resource reviews and knowledge of related fields that may assist and/or relate to information on archaeology. Knowledge and information related to and supporting archaeology is commonly obtained from associated work in socio-cultural anthropology including indigenous American populations, history, oral history, archival studies, document research, landscape studies, botany (floral analysis), faunal analysis including zoology and zoo archaeology, human osteology, soil science, remote sensing, geology (structural & physical), surficial geology, geomorphology (Pleistocene & Holocene), and geography (locational & spatial analysis).

Archaeology is typically divided temporally into historic and pre-contact (Native American) archaeology. Historic archaeology is generally recognized as the time beginning with significant European contact in the United States. It is characterized by the introduction of written records that assist in explaining archaeological features and artifacts recovered from excavations. Examples of historic archaeological contexts are industrial archaeology, maritime archaeology, early tourism, farming, etc.

Historic archaeological review may require a great depth of background research acquiring and incorporating information from local or state historical societies, University of Vermont (UVM) Silver Special Collections, conducting interviews with local historians, residents and landowners as well utilizing on-line resources including but not limited to the Landscape Change Program database and the Division for Historic Preservation's (DHP's) Online Resource Center (ORC) database. At times the consultant may need to rely more heavily on the various methods and techniques used in pre-contact archaeology because little first-hand information (oral history, contemporary documents) survives for examination.

Pre-contact (Native American) Archaeology focuses on the inhabitation of Vermont by Indigenous people before any substantial European contact. Pre-contact Archaeology is usually divided into temporal periods. Examples of pre-contact periods are the Late Woodland Period (A.D. 1600- 800), Middle Woodland (A.D. 800-100), and Early Woodland (A.D. 100-800 B.C.).

The archaeological studies requested in this SOW require the SAC to be knowledgeable in all periods of Historic and Pre-contact Archaeology, underwater archaeology, and specialties within the field of archaeology. Organizations responding to this request for a SAC must have the proven capability to carry out all phases of work for Historic and Pre-contact archaeology, and any related work in associated disciplines including history, landscape, architecture, maritime, flora and fauna, C-14 analysis, etc.). This may be done either through the SAC or a sub-consultant to the SAC (ex: maritime/underwater archaeology).

II. PURPOSE

VTrans acts on behalf of the Federal Highway Administration (FHWA) in conducting archaeological studies to comply with Section 106 of the Historic Preservation Act and Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. & 303) requirements. The National Advisory Council on Historic Preservation (ACHP) is the federal agency that monitors and advises FHWA and other federal agencies on the enforcement of Section 106 involving any federal undertaking. The Vermont Division for Historic Preservation is the organization that is responsible for managing cultural resources at the state level.

VTrans, the FHWA, the DHP and the ACHP entered into a new Programmatic Agreement (PA) on April 5, 2021 regarding the review, management and compliance of cultural resources under Section 106 within FHWA funded transportation projects in Vermont. The PA states that VTrans will conduct reviews of its own projects, using qualified historic preservation and archeological professionals within VTrans, without the requirement for consultation with the State Historic Preservation Officer unless the project is determined to have an adverse effect on a cultural resource. If there is an adverse effect, the project review will follow the standard consultation steps under Section 106.

III. THE SAC'S ROLE WITHIN VTRANS

Projects originate from a variety of divisions within VTrans (Structures, Roadway Design, Aviation, Rail), or they may be municipally managed and originate from outside of VTrans by a town for example and be overseen by a VTrans project manager in the Municipal Assistance Section (MAS). These projects often have an engineering firm hired by the town who has cultural resource sub-contractors but there may be circumstances where the SAC may be asked to conduct work on municipal projects through the Statewide Contract.

All phases of work for transportation archaeological studies including scopes of work, cost estimates, end of field letters and reports will need to be reviewed and approved by the VTrans Archaeologist (Archaeology Officer or Senior Archaeologist) assigned to manage the project. The SAC will be required to consult with the VTrans Archaeologist throughout the project to ensure that work assignments are clear, meet the review standards, and are completed on schedule.

IV. ARCHAEOLOGICAL BACKGROUND

Vermont remains a mostly rural state with scattered population centers and a few heavily developed pockets. Human occupation in Vermont spans over 10,000 years from the Paleo-Indian (9,000 B.C.) through to early 20th century industrial activities and underwater shipwrecks. Systematic archaeological research to identify and evaluate sites began in the 1970s. Development throughout the Champlain Valley and western Vermont has resulted in a higher number of known sites and therefore, a larger amount of data regarding types of sites, occupation patterns, etc. More recent development along with the need to replace bridges that have reached their expected life span has resulted in the identification of a number of sites in the eastern portion of Vermont especially along the Connecticut River watershed. However, several areas of Vermont are still lacking in archaeological data, particularly the far northeast. Since most archaeological data in Vermont is the result of transportation or private development projects, it is difficult to determine if the reason for the dearth of sites in these rural areas is due to low sensitivity or simply the lack of land and transportation development.

Several sites are known throughout the Green Mountain National Forest (GMNR) which runs along the spine of Vermont and is a natural separation between the western and eastern parts of the state. The SAC must coordinate with the GMNF when conducting studies within GMNF boundaries. The GMNF maintains cultural resource data within the vast upland area of Vermont that constitutes the central-southern mountains and southern upland interior of the state. The majority of sites recorded by the GMNF are historic archaeological sites and are included in the statewide database of approximately 5000 known sites. The GMNF covers parts of the following counties-- Addison, Bennington, Rutland, Washington, Windham, and Windsor.

The area along the Missisquoi River in the northwestern part of the state contains several known archaeological sites as well including a National Register eligible archaeological district within the boundaries of the Missisquoi National Wildlife Refuge (MNWR). These lands are on federal property and any consultant conducting archaeological studies performed within these boundaries must obtain an Archaeological Resources Protection Act (ARPA) permit (see page 13 letter e for additional information) .

Laws, Regulations, Guidelines and other Documents:

While it is FHWA's role to take the lead in identifying and establishing consultation with Indian tribes consistent with the requirements of 36 CFR 800.2(c)(2) and 36 CFR 800.3(c)-(f), the tribes have agreed to continue direct coordination and consultation with VTrans throughout the project and include FHWA in correspondence. As such, there are many instances where the SAC and tribes may be asked to work together on projects concerning the discussion of impacts to a site, public outreach and education and mitigation efforts to name a few examples. Therefore, it is important that the SAC is knowledgeable concerning the requirements and procedures for consultation with tribes and be familiar with the tribes who have cultural affiliation in Vermont. It is important to understand that tribes may attribute cultural or religious significance to certain items or locations. The SAC must be respectful of any confidentiality, sensitivity or other concerns and act accordingly.

The SAC will ensure that they have a working knowledge of the pre-contact and historic archaeological contexts and cultural overviews for Vermont and the New England area. The consultant will need to refer to existing contexts as well as establish contexts for areas they are working in and be able to apply that information when determining eligibility of a resource. The SAC will be expected to use comparative examples including both local and regional in determining significance and apply appropriate research questions when recommending further study. The SAC must also have a working knowledge of the most recent VTrans PA signed in 2021. (Appendix A)

Other examples of resource information the SAC must be familiar with are listed below.

- Vermont Historic Preservation Plan
- Vermont's Prehistoric Cultural Heritage
- The VT State Historic Preservation Office's Vermont Archaeology Guidelines, 2017.
- Programmatic Agreement among VTrans, VDHP, FHWA and the ACHP, executed in 2021.
- Front Yard Archaeological Study, Louis Berger Group, 2005-2006.
- Section 106 Federal Rail Administration Program Comment Exempted Activities list for Rail ROW
- Online Resource Center (Division for Historic Preservation web site. Access request necessary)

In addition to the documents mentioned above, consultants will be expected to have a thorough knowledge of laws and regulations that apply to conducting archaeological studies and historic preservation. Below is a sample listing:

- National Historic Preservation Act of 1966
- Department of Transportation Act of 1966

- National Environmental Policy Act of 1969
- Archaeological and Historic Preservation Act of 1974
- Archaeological Resources Protection Act of 1979
- Native American Graves Protection and Repatriation Act of 1990; 43 CFR 10
- Historic Preservation; 36 CFR 800
- Curation of Federally Owned and Administrated Archaeological Collections; 36 CFR 79.
- 22 VSA 14 Regulations

V. WORK ORDER REQUESTS (WORs), WORK AUTHORIZATION REQUESTS (WARs) and THE PHASES OF ARCHAEOLOGICAL STUDY

All work assignments for the various phases of archaeological review as described in detail below will be sent via a Work Order Request (WOR) from the VTrans Archaeology Staff. The VTrans Archaeology Staff may send a WOR to one or more consultants and it is expected that the SAC will complete the WOR within the requested time frame and submit to the VTrans staff if interested and able to take on the assignment. VTrans will then select a consultant for the work and submit a Work Authorization Request (WAR) to Contract Administration for approval. An authorization confirmation email will be sent from Contract Administration to the SAC to notify them of their selection for the project. It is important that the SAC does NOT begin work prior to receiving the authorization confirmation from Contract Administration.

1. Archaeological Resource Assessment / Resource ID phase

VTrans projects are initially reviewed to determine if there is potential for archaeological resources in the project area. This is described as an Archaeological Resource Assessment (ARA) in the Vermont Archaeology Guidelines 2017 but is also commonly referred to as an Archaeological Resource ID. The ARA or Resource ID takes place early on in the project scoping phase. An initial project location is identified by the project manager, design engineer or general consulting firm but the total area, project limits and complete scope may not yet be defined. The SAC will receive guidance from VTrans Archaeology staff concerning the area of potential effect but the SAC should anticipate the use of temporary bridges, crossovers, possible staging areas and off-road access to and around structures and adjacent to roadway corridors when conducting ARA studies and ensure that the areas surveyed are adequate to accommodate various alternatives for project design.

An ARA will consist minimally of the following elements:

1. Background Research including:
 - a. Defining the project location using resources such as, Google and historic maps (ex: Beers, Wallings, Sanborn, etc.)
 - b. Completed Environmental Predictive Model
 - c. VDHP's Online Resource Center (ORC), (Town, Archaeological Inventory, Historic Sites & Structures, National Register, SHPO USGS maps with known sites plotted, etc.)
 - d. Appropriate on-line or other archival research as necessary especially when researching historic contexts or sites.
 - e. Interviews with local informants, landowners, Native Americans as appropriate as well as coordination with the project engineer.
2. Site visit that must include the following:
 - a. Walkover of project area, assessment and documentation of land forms, features, obvious disturbances, etc.
 - b. Soil core testing to determine areas of sensitivity and disturbance.
 - c. Photographic documentation of the project area and sensitive areas.

- d. Digital recording of sensitive areas using GPS/GIS applications. (specific requirements are detailed later in this scope under letter j: Data Collection Methods – GIS” on page 14.

*A note about winter archaeology: Please note that site visits must be conducted when the ground is clearly visible and is not frozen. Site visits conducted after the ground has frozen or after snow has fallen may be rejected by VTrans and/or DHP. Any proposed winter archaeological assessment must be approved by the VTrans Archaeologists prior to conducting the assessment.

3. ARA Report:

This will be a thorough and concise report combining the initial background research information and results of the field inspection.

The consultant will include at minimum:

1. Location map of the project area
2. ORC map of the project area to support narrative of archaeological sensitivity or absence of.
3. Historic maps as necessary to support recommendations
4. Narrative and other requirements in accordance with the VT Archaeology Guidelines of 2017.
5. Sensitive areas will be clearly marked on a map that is an appropriate scale to show the various sensitive areas and included in the report as a visual to support the narrative. Sensitive areas must be accurate from ground level as this information will be incorporated into plans and used to determine project impacts to potential resource areas. These cannot simply show a birds’ eye view of sensitivity.
6. A copy of the report will be sent to the VTrans Archaeology staff for review and approval.
7. In addition to the report, archaeological sensitivity information will be compiled into shape files and .dgn files and sent to the VTrans Archaeologist for uploading into Microstation the geodatabase. All .dgn files must comply with the most recent version of the VTrans “Resource ID Standard Operating Procedures for Consultants” document. (A copy of the current version of this document is included in Appendix B)

Once detailed plans are available, they will be reviewed based on the results of the ARA to determine if any of the potentially sensitive areas will be impacted by project activities. These may be at Conceptual Plans or Preliminary Plans stage depending on the scope and nature of the project. The plans will show actual project limits and location of activities such as temporary bridge placement, etc. They will also show the archaeologically sensitive areas defined in the ARA. Some projects may not be initiated with detailed project plans and may consist of a sketch with measurements. Examples may include projects that are small in scale such as district maintenance or those that are on an accelerated schedule.

Plans will be reviewed by the VTrans Archaeology staff and/or by the SAC with recommendations provided to the VTrans Archaeology Staff for concurrence. If no archaeologically sensitive areas exist within the project area of potential effect or if they can be avoided, then the project may be recommended for clearance at this point and no further study is required.

If the VTrans Archaeology staff identifies archaeologically sensitive areas that will be impacted by project activities, the SAC will be asked to review the plans and submit a detailed scope of work and cost estimate, for a Phase 1 Archaeological Study. A copy of the scope and cost will be sent to the VTrans Archaeology staff for review and authorization. The cost estimate will be reviewed and approved to ensure that it matches the approved rates in the contract. Once approval has been granted, the SAC will receive confirmation through an email from Contract Administration. Work may not commence until authorization has been granted.

2. PHASE 1 STUDY

If further study is recommended and agreed upon by the VTrans Archaeology Staff after the ARA level, the SAC will prepare a detailed Scope of Work and Cost Estimate following the guidelines as defined in VDHP's Vermont Archaeology Guidelines, 2017 for conducting Phase 1 studies in VT. These documents must be reviewed and accepted by the VTrans Archaeology staff prior to the beginning of work. Special circumstances may require work to begin prior to a written authorization. This includes emergency or other urgent work as directed by VTrans. In these cases, VTrans Archaeology Staff will work with Contract Administration to arrange authorization and payment to the consultant and will be based upon the nature of the emergency.

Phase 1 scopes must include a narrative description of all proposed work as well as maps clearly defining the project location along with illustrations showing all locations of proposed work within any defined sensitive areas. All Phase 1 scopes must have a schedule of all major tasks by workdays starting with day 1 for authorization to start. The cost estimate must include all personnel, wages and hours/days projected to work on a project and must match the wages agreed to in the contract. Any wage changes must be reviewed and approved by the VTrans Audit Section and Archaeology Officer prior to use by the SAC.

Phase 1 studies as defined by the Vermont Archaeology Guidelines, 2017 consists of subsurface testing to determine if the archaeologically sensitive land identified in the ARA contains an archaeological site. A site may consist of surface finds and features as well as buried and intact artifacts and features from historic or pre-contact sites. The SAC must determine the most appropriate testing methods based on landform (ex: floodplain vs upland), type of soil, expected site type, disturbances, and any other observable characteristics that may inform or limit testing strategies. It is important that the methodologies used are appropriate to the type of site being investigated and that testing strategies are adequate to meet the standards outlined in the guidelines and federal regulations. This includes shovel testing methodology and sampling amounts. If test pits are part of the strategy, then they must be 50cm x 50cm square with clean sides so that soil stratigraphy can be clearly identified and analyzed. Proper equipment must be used to achieve square test pits. This is not only important to determine soil stratigraphy which helps to interpret the site, but it is also important to ensure an adequate percentage of the project area is sampled at the Phase 1 level and makes it easier to evaluate testing at subsequent levels when pits are opened up into larger units. Phase 1 reports may be rejected by VTrans and/or DHP if the methods do not meet the standards and the consultant may be asked to re-do the work at their expense.

The SAC must also define the archaeological site boundaries to the best of their ability during the Phase 1 study. This includes the spatial boundaries in acreage as well as the depth below surface. Site boundaries may extend beyond project limits and the SAC must provide recommendations as to how to protect these areas and avoid unanticipated impacts during construction. An example of this type of recommendation may be the use of protective fencing during construction. Site information will be submitted to VTrans as a shape file in two formats: one showing exact test locations, and one as a generic polygon. Additional information on shape file requirements and formatting is detailed in the Vermont Archaeology Guidelines, 2017.

The SAC will submit an end of field letter upon conclusion of the Phase 1 fieldwork. The End of Field letter must include a narrative summary of the methodologies used in the studies as well as results and recommendations for either further study or clearance. Maps will be included with the end of field letter illustrating the location of testing locations as well as identification of positive and negative units. If no sites are identified, the End of Field letter will suffice as the final report using the Short Report Format included in the VT Archaeology Guidelines, 2017. If a site is identified at the Phase 1 level, then a full report will be required to follow the End of Field letter. The SAC will be required to submit the End of Field letter to VTrans archaeology staff within two weeks of the conclusion of the Phase I fieldwork. Timely reporting of field

conclusions and recommendations is extremely important in order to keep the VTrans project on schedule. One copy of the letter is required and may be sent either electronically or in hard copy format for review and concurrence.

3. PHASE 1A AND 1B STUDIES

Phase 1A and 1B work is a sub-division of Phase 1 (identification study) and restricted to special conditions.

Phase 1A Study

This level of archaeological work is only requested under specific circumstances where a full phase 1 study would not be appropriate at the time of the requested review. A Phase 1A study may be requested for a VTrans project that is large and involves several design alternatives. In this case, it may be costly to conduct a full Phase I subsurface study for all alternatives, therefore, a Phase 1A may be used to evaluate the archaeological potential on the various alternatives and provide initial recommendations without the need for a full Phase 1 study until an alternative has been evaluated for all potential considerations and chosen as the preferred alternative. A Phase 1A involves in-depth background research on the project area including pre-contact and historic context development, archival research and other supporting documentation on the natural and cultural setting of the project area with respect to archaeological potential. This level of study is sometimes used at the pre- design level for an EA (Environmental Assessment) or EIS (Environmental Impact Statement). The Phase 1A includes documenting archaeologically sensitive areas along the various alignments and often includes GIS predictive modeling as a guide for determining archaeologically sensitive areas that will be verified during field visits. Phase 1A studies are also used for projects located within historic districts, suburban, or urban areas where little or no land is available for Phase I subsurface testing without removing portions of pavement, sidewalk, structures, etc. The purpose of a Phase 1A Study is to gather as much information as possible to make an accurate archaeological assessment for the project's area of potential effect (APE). It is the SAC's responsibility to check with utility companies and town maintenance for information on the subsurface environment from construction of utility lines (sewer, water, telephone, etc.). A Phase 1A draft report will be submitted to the VTrans Archaeology staff upon completion of the Phase 1A study for review and concurrence. A final Phase 1A report will be required once comments have been returned to the consultant. One final copy in electronic form will be submitted to VTrans along with one unbound hard copy.

4. Phase 1B Study:

The Phase 1B study consists of the excavation and data analysis portion of the full Phase 1 investigation. A Phase 1B will follow the Phase 1A once an alignment has been chosen or reduced to a reasonable number to make the study worthwhile or once the project has reached a point where excavation within an urban area is appropriate. A Phase 1B Study should only be done when detailed plans are available for the project or chosen alignment and in consultation with VTrans. The Phase 1B study may involve excavation within an urban setting including below existing pavement or once structures have been removed. Recommendations for the Phase 1B portion may be included as stipulations in an MOA or Adverse Effect Section 106 letter and carried out at the time of construction if it proves to be more efficient, cost effective and appropriate for the project as a whole. Therefore, extensive coordination and communication with VTrans, the contractor and other officials or organizations may be necessary to ensure that this work is carried out successfully and meets the standards for Section 106. An End of Field letter will be completed at the conclusion of the field portion of the study and submitted to VTrans within two weeks of field completion. In addition, a Phase 1B draft report will be submitted to VTrans for review and concurrence. The Phase 1B report must reference the corresponding information from the Phase 1A report to support the findings from the Phase 1B excavation but need not include the entire Phase 1A portion of the report.

5. PHASE 2 STUDY

If the SAC recommends further study after the completion of Phase 1 and it is agreed upon by the VTrans Archaeology Officer, the SAC will be asked to prepare a detailed scope of work and cost estimate for a Phase 2 archaeological study as defined in VDHP's Vermont Archaeology Guidelines, 2017. All Phase 2 scopes of work must have a schedule of major tasks by workdays starting with day 1 for authorization to begin the study. The cost estimates must include all personnel work classifications/titles, corresponding wages and hours/days projected to work on the project. The wages must be those with wages previously agreed upon in the contract. Any wage changes must be reviewed and approved by VTrans Audit Section and the Archaeology Officer. An End of Field letter is to be completed and submitted to VTrans within two weeks of concluding the Phase 2 study. The letter must follow the format and contents outlined in the VT Guidelines, 2002 and include recommendations for either clearance or Phase 3 Data Recovery. Recommendations can include but may not be limited to avoidance, alternatives and stipulations such as fencing or full data recovery if site avoidance is not possible. At this level, the SAC may be asked to be involved in discussion with VTrans and other organizations to offer their professional expertise as to whether or not it may be possible to avoid or minimize impacts or provide alternatives if any exist before deciding on Phase 3 as the only solution.

As with all phases of work, the SAC will submit a draft report to the appropriate VTrans Archaeologist for review, comments, and concurrence. The VTrans Archaeologist will provide comments on the report within 30 days of draft submittal. The SAC will then submit a final digital copy of the report to VTrans incorporating any necessary revisions. They will also send one copy to the State Historic Preservation Office at the Division for Historic Preservation to be uploaded to the Online Resource Center report files.

The major goal of the Phase 2 study is to determine whether or not the site meets criteria to become National Register (NR) eligible. In order to accomplish this, it is important to adequately define the site boundaries and gather additional information about a site's characteristics, stratigraphy, context, and integrity. This consists of focusing efforts on the positive locations and ensuring that the vertical and horizontal testing areas are sufficient to determine the site's boundaries within the project's area of potential effect. This includes testing to sterile soils and moving systematically outward from the positive test locations spatially at appropriate intervals to ensure that the area is adequately covered to understand the boundaries and correctly interpret the site. These are critical components of being able to determine NR eligibility and make accurate recommendations on site treatments including avoidance, minimization, further study, and site protection methods.

Generally, a site is considered significant if it possesses characteristics that contribute to further knowledge of the areas history whether that site is historic or pre-contact. This is usually defined by finding features or diagnostic artifacts that establish a date to the site. However, a site may also be considered significant if it possesses a high concentration of artifacts in the proposed impact area even without diagnostics or features. It is possible that the core site and area with features lie outside the project impact area, but these areas contribute to the overall understanding of the site. This scenario may be more difficult to assess since the characteristics aren't as clear. If the consultant is unsure of NR eligibility after the Phase 2 work, they may consult with the VTrans Archaeologist to assist making a recommendation.

Prior to field investigation, the SAC must establish research questions and develop methodologies to help best answer those questions and recover data. The SAC should refer to the Vermont Archaeology Guidelines, 2017 for further detail in preparing for Phase 2 studies. If it is determined that the site is NR eligible, the consultant will list all criteria that apply along with discussion to support their recommendation.

6. PHASE 3 STUDY

If it has been agreed upon by VTrans at the Phase 2 level that the archaeological site is National Register eligible and it has been determined that the site cannot be avoided by redesign or other options, then a Phase 3 Data Recovery study will be necessary. The SAC will be asked to prepare a detailed scope of work and cost estimate to conduct a Phase 3 archaeological study as described in the Vermont Archaeology Guidelines, 2017. The Phase 3 scope will include a schedule of major tasks by workdays starting with day 0 for authorization to begin the study. The cost estimates must include a list of all personnel that includes wages and hours/days projected to work on the project. The wages must be consistent with wages previously agreed upon in the contract. Any wage changes must be reviewed and accepted by VTrans. The SAC will be asked to include a Data Recovery Plan as a component of their scope of work. This plan will be drafted in consultation with VTrans, the SHPO, THPO if applicable, and in participation with other agencies, organizations, individuals as appropriate. Organizations will vary based on the scope of the project and stakeholder interests.

The Data Recovery Plan will include at minimum the following components:

1. The project history and summary of findings to date,
2. Research questions for Phase 3 and how they will be addressed within the proposed work,
3. A clear description of work proposed for Phase 3 including strategies, methodologies and specific tasks for public education and interpretation of the site,
4. Public education and interpretation: this can include but not be limited to school curriculum development, exhibits/interpretive signage, use of social media, volunteer opportunities, presentations, etc. The plan may also need to include such items as a detailed safety plan, traffic control, backhoe monitoring, etc. Public education and outreach costs must be included in the cost estimate for Phase 3 Data Recovery. A schedule of proposed outreach tasks and events will be included with as much detail as possible to the extent that they are known. A full schedule of all public outreach tasks, totals for event attendance, etc. will be required as part of the final report; and
5. The SAC must clearly outline the percentage of the total site that they are proposing to be excavated, locations of Phase 3 studies if multiple areas and discussion and support of why those areas were chosen as the best locations for data recovery. There are no firm federal regulations or policies. The percentage excavated is determined in consultation with SHPO and THPO if applicable, and takes into consideration site size, what percentage of the site is being adversely impacted, and type of site. Since it is impossible to excavate an entire site, a percentage is agreed upon by all parties that involves a statistically acceptable amount of site recovery based on the variables mentioned above along with an acceptable cost.
6. The SAC will have identified the exact amount of site area impacted by the project in square meters and will propose a sampling and recovery strategy. The area involved will have to be clearly identified and mapped on the design plans at a reasonable scale to show the excavation units and grid system to be used in the recovery. The archaeological site will have to be placed on project plans so the exact location and spatial relationship can be determined between the archaeological site area and the amount of impact from the proposed project.
7. Data recovery is a destructive process, and a portion of an archaeological site will be destroyed as a result of the recovery. The SAC must document and be prepared to present at meetings all possible impact avoidance and minimization strategies in combination with the Data Recovery/Phase 3 study. Data Recovery of any site must be accompanied by an effort to preserve as much of the site as possible in-place. Portions of a site that will be preserved from impact must be addressed as to how they will be preserved and protected during construction.

8. Public participation during resolution of Adverse Effects is clearly stated in the Section 106 regulation 800.6(a) (4), 800.6(a) (5), and 800.11(c). The SAC must assist VTrans in communicating to the public and interested parties the importance of the following components of the project and archaeological study: magnitude of undertaking, nature of effects, relationship of federal involvement, and satisfactory public participation in all steps of the project. The SAC will be required to play an important role in public participation as well as project meetings to adequately explain and justify why the amount and type of data recovery is appropriate to the size and scale of the proposed project.

Items to be Considered during All Phases:

- a. **The Project area or Area of Potential Effect (APE):** In defining the project Area of Potential Effect (APE) and determining appropriate identification efforts, VTrans considers the potential direct, indirect, and cumulative effects of the project. This includes the possible effects to known or potential historic and/or archaeologically sensitive properties and their aspects of integrity both within and beyond the project limits based on the scope, scale, nature, setting, topography, and other environmental factors associated with the project, such as views from and towards the project area and the potential for long-term effects.

Generally, the project APE for direct effects will be identified by the construction easement outside of the cut-and-fill lines or by project demarcation fencing indicated on the plans. All Phase 1 reports must include the total project APE as well as those areas tested within the APE.

- b. **Landowner Permission:** Most highway projects require acquisition of private land over and above the existing State owned right-of-way (ROW) either through temporary or permanent easements. For the purposes of conducting fieldwork, the SAC is responsible for obtaining written permission to enter all private lands for the purpose of conducting subsurface testing. Current State of Vermont law (State Highway Law, Title 19, Chapter 1, §35- "Entrance upon the lands for survey") allows archaeologists to enter private property when conducting non-invasive survey such as an Archaeological Resource Assessment. Invasive survey including excavation of test pits should not be considered as part of this allowance. If the landowner strongly objects to fieldwork or entrance of property, the SAC should not conduct work on that property. Denied access to private land will be reported to the VTrans Archaeologist and documented in the End of Field letter or report. Any areas requiring additional field work including areas rejected by landowners will be included in recommendations and stipulations for further work in the Section 106 final comment letter.
- c. **Artifact Acquisition from Private Lands:** Archaeological studies are often conducted on privately owned property. For this reason, in addition to obtaining landowner permission to access property, the SAC must also obtain permission from the landowner to acquire any artifacts found on the property. A standard Gift of Deed agreement form has been created by the Vermont DHP and is included in **Appendix C** at the end of this scope. The signed Gift of Deed form MUST accompany all artifacts from the property. The Archaeology Heritage Center WILL NOT accept any artifacts without a form in accordance with Title 27 VSA 12 "Museum Property". SACs that conducted subsequent phases of archaeology on the same properties (Phase 2 and Phase 3) should obtain subsequent Gift of Deeds PRIOR to excavation if at all possible since similar types of artifacts are often expected. If the landowner wishes to keep some or all of the artifacts, then the VTrans Archaeologists will be notified so that together, a plan can be created to ensure that the best possible information from those artifacts can be transferred to the AHC (ex: in the form of careful photographic documentation, casts, illustrations, etc.). It should also always be stressed that the landowner can donate the artifacts at any time in the future should they wish to do so. A copy of the Gift of Deed should be left with them in case they change their mind. Although we cannot offer compensation for obtaining the artifacts, they are welcome to visit the AHC, learn more about archaeology in their area, and obtain a copy of the final archaeology report. All artifacts donated to the AHC and have an accompanying Gift of Deed in accordance with 27 VSA 12, will become property of the State of Vermont and will be housed at the Archaeology Heritage Center in Barre, VT.

- d. **Archaeological Resources Protection Act (ARPA) Permit:** Occasionally it may be necessary to conduct archaeological studies within federally managed property. One such federal property in Vermont is the Missisquoi National Wildlife Refuge along VT RT 78 in Swanton, VT. Federal agencies that manage property are responsible for the care and protection of archaeological resources within their boundaries. Therefore, the SAC will be required to apply for an ARPA permit to carry out archaeological studies within federally owned and managed lands. The federal agency may have different or additional requirements that the SAC must follow from that of VTrans. The SAC is expected to comply with all necessary requirements of the permit in order to be in compliance with the law. Permit applications must be filled out completely and submitted to the Regional Historic Preservation Officer at the US Fish & Wildlife Service. Further information regarding ARPA permits can be obtained from the following web site. www.nps.gov/archeology/sites/permits.htm
- e. **Spatial boundaries of an archaeological site:** The SAC will make a strong effort to identify the horizontal and vertical boundaries of a site during Phase I. Identifying the existence of surface artifacts alone is not adequate. Some form of subsurface testing must be conducted to estimate the approximate depth and context of archaeological deposits. The site area will be defined within the APE. It is possible that the site extends outside the project APE, and this should be discussed in both the End of Field letter and in discussion with the VTrans Archaeologist. Archaeologically sensitive areas adjacent to the project as well as nearby known site areas may be noted and included in the End of Field letter, but the SAC will not conduct any testing outside the APE without permission from VTrans and the landowner.
- f. **Off-Site Activity (OSA) Requests:** Off-Site Activity (OSA) requests pertain to anything requested by the Contractor that is outside of the project area but associated with the project. This can include, waste, borrow and staging along with dewatering sites and erosion control measures. Because these requests come in during construction, they are given highest priority and the VTrans review team commits to a 15 work-day turnaround time. Requests are processed within the VTrans Environmental Section and reviewed by the VTrans Archaeology Officer and Archaeologist. If a site is denied for use due to archaeological sensitivity and the contractor wishes to pursue the use of that site, the contractor may hire an archaeological consultant to conduct testing to determine whether or not a site exists in the proposed area of use. It is the contractor's responsibility to hire the consultant but VTrans Archaeology staff grant final approval of the site. Occasionally a SAC may be asked by VTrans to review an OSA request if it involves a large area or multiple areas along a corridor or if there is a violation of the contract specifications as a result of use of the site prior to approval and the site is found to be archaeologically sensitive. The VTrans Archaeology staff will coordinate with the contractor and the SAC if this type of request is made.
- g. **Work Outside Construction Limits:** No archaeological work will be done outside the limits of construction or APE without direction and written authorization from the VTrans Archaeology Staff.
- h. **Coordination of Research:** Historic archaeological resources identified in a survey will take into consideration any related standing structures. When employing an architectural historian and/or landscape architect, the SAC shall incorporate the above- ground architectural & historical information on a structure and landscape into the archaeological data and analysis. For example, coordination of research should consider, but not be limited to, layout of structure(s) within the landscape, archival research (town history, structure history and association), date and elements of architecture, possible additions and changes to the structure, and association of subsurface features and artifacts.
- i. **Data Collection Methods (GIS):** Digital Geographic Information System (GIS) deliverables will improve the ability to gather, record, and access information about Vermont's cultural resources and allow for easy transfer into the VTrans archaeology geodatabase. The geodatabase stores shapefiles containing location information for existing sites and sensitive areas so that cultural resource information can be easily accessed and referenced when reviewing projects. Sensitive areas and site information is contained in a GIS layer (shapefile) that can be overlaid on maps and project plans which significantly improves the ability of the archaeologist to accurately depict where resources are in relation to potential

project impacts and provide appropriate recommendations. The deliverables must be in a format compatible with ESRI's ArcGIS platform. Shapefiles containing the following feature classes should be submitted along with the End of Field letter so this information can be used in further design of the project and to ensure that stipulations in the Section 106 review are met. All .dgn files must follow the VTrans "Resource ID Standard Operating Procedures for Consultants" document in order to be compatible with the program used to generate design plans and ensure that resources are depicted on the correct levels in a consistent manner. Please refer again to Appendix B for these standards.

Phase 1:

1. Project APE (polygon)
2. Area(s) within APE determined to be archaeologically sensitive (Polygon) with appropriate buffer
3. Area polygon showing Phase 1 study area (this may be smaller than the sensitive area)
4. Polygon showing Phase 1 field walkover (if applicable)
5. Phase 1 test pit locations (point) with appropriate labels in metadata
6. +/- STP Values in metadata + dimensions of STPs
7. Phase 1 transect (polygon) in real space to show actual dimensions, Phase 1 labels
8. N/E values in metadata
9. Metadata should include consultant name, level of study, date of Phase 1 studies, as well as cultural affiliation and artifact types, feature information, etc.
10. Phase 1 transects as a polyline

Areas within the project APE determined to be archaeologically sensitive should be submitted as a polygon feature class. Phase 1 test pits should be submitted as point data with attributed +/- metadata values. Phase 1 transects should be as a line feature representing the real space location of plotted transect with easting and northing included in the metadata.

Phase 2:

1. Polygon showing the area(s) of Phase 2 testing with buffer – metadata should include consultant name, level of study, date of Phase 2 studies, cultural affiliation and artifact types, feature information, etc.
2. Archaeological site boundaries must be submitted so that they are clearly distinguishable from the project area boundary (APE).
3. If a site buffer is proposed as a stipulation to avoid a site, the SAC will submit a site buffer polygon illustrating the minimum required distance from the site. This information will be included in final construction plans and submitted to project engineers for inclusion in the contractor bid document.

Phase 3:

1. GIS deliverables will be discussed on a case-by-case basis.

- j. **Maps and Illustrations:** All scopes of work must include a detailed map showing the entire site area in relationship to the project area. VTrans will require the SAC to send site area information including test pit locations to VTrans to be incorporated into project plans. This information will assist in knowing where testing has occurred, aid in plans for avoidance and assist in planning for future phases of work if necessary. No proposal will be considered complete without a detailed map showing the proposed Phase testing area(s) and an explanation for the testing that is site specific. The VTrans encourages innovative approaches such as exploratory trenching, ground penetrating radar, metal detectors, interval coring, etc. Historic archaeological sites may need to be treated differently in testing from pre-contact sites because of their different site formation and development, different content, and different types of artifacts and features. Pre- contact

sites that are deeply buried in a flood plain setting must be investigated differently from upland sites that are at the bottom of a plow zone.

a. Comparative examples-local & regional The SAC must have substantial knowledge of the history and current information on Vermont archaeology in order to fully evaluate the site and make an informed and accurate determination of significance as well as recommendations concerning further treatment of the site. The SAC must also be familiar with archaeological sites known within the vicinity of the project as well as the general region and be able to describe how their findings contribute to the larger body of knowledge. It is important to not only evaluate the site individually but compare and relate it within the context of other sites within that region. This method must be considered for both Native American and Historic period sites. A greater amount of archival research will be required and will be useful for evaluating Historic period prior to and in conjunction with additional field study.

b. Appropriate Research Questions The set of research questions used in the evaluation of significance must be as specific as possible. The SAC should refer to the (Vermont Archaeology Guidelines, 2017) for more detailed information regarding research questions at the various levels of study. General statements should be avoided, and the SAC must consider specific questions that will significantly advance our knowledge and understanding of a particular occupational period or site function. Data must be achievable from the information potential of the site in question.

c. Recommendations: The SAC is expected to provide recommendations at the end of each phase of archaeological work. Recommendations must include alternatives for avoidance and minimization if such options exist as well as recommendations for the next phase of work. In the case of Phase 3 recommendations, all feasible avoidance and minimization alternatives must be explored first. These alternatives may include solutions such as design modifications or incorporation of site into design. Although Phase 3 (data recovery) is considered a standard mitigation measure within the VTrans PA Manual, it should be reserved as a last resort since it is a destructive process. Excavation of an entire site is not recommended scientifically, since none of the site will remain for future research or for future arguments to be tested independently. Entire site excavation is also unrealistic in terms of time and cost therefore, Phase 3 recommendations should be focused on those areas most likely to yield the highest potential data considering Criterion D of the National Register. The SAC should also consider specific strategies and methods most suited to accomplish this work. The SAC must establish appropriate research questions based on the Phase 2 studies and establish an argument that further work is warranted and will likely yield data that will increase our knowledge of the site in a positive manner. There should also be strategies for preserving portions of the site for future study if this is possible. Other methods of mitigation may be considered such as experimental studies, burial of the site, etc. but must be done in consultation with and approved by the VT DHP since these are not standard mitigation measures.

d. National Register Sites If the SAC recommends an Archaeological site for nomination to the NRHP, the SAC must make a detailed and convincing argument in their draft report. The SAC must refer to the National Register Bulletin, "How to Apply the National Register Criteria for Evaluation" for guidance in developing an argument for nomination. They should also refer to the Vermont Archaeology Guidelines, 2017. The SAC will need to establish why the site is NR eligible and provide an explanation to support their recommendation. The site may be eligible under one or more criteria and the SAC should list and explain in detail all the criteria that apply. The SAC must address the following applications to the criteria when considering them for NR eligibility: 1) historic context, 2) research questions, 3) presence of adequate data, including vertical and horizontal distributions and interpretations of the site, 4) site integrity, 5) any previous disturbance 6) any potential threats to the site. In addition, the SAC must consider and know how to apply criteria to properties such as the following: religious properties, moved properties, birthplaces or graves, cemeteries, reconstructed properties, commemorative properties, sacred spaces, and properties within the last fifty years. Lastly, the SAC must evaluate the integrity of a site and compare it to similar sites to determine if the site qualifies as NR eligible and if further study is warranted or if there are better examples that retain more integrity or information elsewhere. The SAC must consider

how many sites remain of that type and the threat of future impacts to those sites to assist in determining if it is worth exploring further study of a site that lacks some integrity but may be rare or endangered. These considerations may include asking questions such as how many other sites exist from the same time period and similar function (i.e., campsite, village, mill site, etc.); and are there any other sites in better preservation condition than the one under consideration for NRHP listing? A site does not need to be listed on the NR in order for an argument to be made for protection, project avoidance or mitigation for loss. Many sites are never taken through the formal process of being listed on the NR and neither VTrans nor its consultants are responsible for listing sites for VTrans projects.

e. Assigning Archaeological Site Numbers: When an archaeological site is discovered, the SAC is responsible for obtaining a Vermont Archaeological Inventory (VAI) form from the DHP and filing it out completely with as much site information as is known at the time. This form will be submitted to the DHP so it can be formally entered into the sites inventory. A copy of this completed VAI form will be submitted with the draft archaeology report to VTrans. Do NOT send the official VAI form to VTrans as VTrans is not responsible for entering the data or keeping track of the site information. This information MUST be sent to the DHP.

f. Public Education and Outreach All Phase II and Phase III studies will address public education and outreach as an important part of their proposal and have an itemized budget addressing this need. The public education and outreach should be concurrent with fieldwork in addition to any planned post-fieldwork outreach. The public outreach may include coordinating with town(s) involved, property owners affected, Indigenous peoples of the region and federally recognized tribes with ancestral interest in the project area, educational institutions, local/regional/statewide politicians, the general population, and other interested groups/individuals as applicable.

Public outreach and education may take many forms including activities that take place on site during the phase 3 such as public visitation events, volunteer opportunities, social media updates including vlogs, web site information, etc., as well as long-term activities including exhibits, educational material, video material and public signage. The SAC is encouraged to think creatively when considering forms of public outreach and education including the utilization of current technologies to expand the number of people reached.

The SAC must include a schedule for completion of their public education and outreach plan in all their proposals. All activities related to and involving public education and outreach during phase 3 field mitigation must be clearly documented as to the goal and objectives, participation (how many attended), and the outcomes. Clearly indicate what worked and what did not work. The SAC should work closely with VTrans Archaeologists in developing an acceptable public education and outreach plan for Phase 2 and 3 Study proposals. The phase 3 public outreach plan will also involve consultation and coordination with the SHPO. The SAC should also refer to the Vermont Archaeology Guidelines, 2017 when developing the public outreach plan.

VI. MANAGEMENT OF ARCHAEOLOGICAL COLLECTIONS AND INFORMATION

(Vermont Archaeology Guidelines, 2017)

Curation and Information Standards: VTrans requests that all consultants must strive to achieve a standard that is within reason and cost of the "federal standards". The federal standards are spelled out in 36 CFR Part 79, "Curation of Federally Owned and Administered Archaeological Collections" (1990 federal regulations). Archaeological collections consist of all artifacts and associated records including but not limited to associated field notes, site forms, photo-documentation materials (photos, slides, negatives), location information, final reports and digitally archived information.

Collections must also contain the following documentation in order to be accepted by the Heritage Center for archival: Deed of Gift form, records on lost items or discards, repatriations, items kept by landowners and as approved by VTrans. Collections will not be accepted for curation by the Archaeology Heritage Center without accompaniment of the Deed of Gift form signed by the landowner (see Appendix C)

Collections must be in archival quality (acid free) standard office size boxes and artifacts must be organized and packed carefully and appropriately for long term storage preservation and to minimize the potential for damage. Boxes must be clearly labeled on the outside and include consultant information, project name and number, and a brief description/listing of contents.

In each proposed study, the SAC must estimate the number of potential boxes (standard office file size) needed and multiply it times \$500.00 per box. One box is the minimal fee for any fraction of a box. This \$500 per box fee is paid to the Archaeology Heritage Center in Barre, VT for perpetual care of the contents in that box. If the SAC submits collections that do not attempt to meet the standards in 36 CFR Part 79, the SAC will be charged an additional fee to bring contents up to the standard level of curation. All boxes will have at least one inch of free space to ensure that they are not overloaded.

VII. VTRANS EXPECTATIONS OF THE SAC

In addition to conducting archaeological evaluations for VTrans project reviews, the SAC will be expected to comply with the following expectations during their contract term:

1. **Communication:** The SAC shall be available for phone and email consultation with the VTrans Archaeologists during workdays and will respond to requests and correspondence in a timely fashion.
2. **Deliverables:** It is expected that the SAC will complete all work in a timely manner and submit deliverables within the agreed upon timeframe specified within their proposal. This is to ensure that information from archaeological studies can be used to inform the project as it moves through design and, to ensure that all expected commitments are fulfilled within the consultant contract time period. Deliverables generally consist of archaeological resource assessment reports, end of field letters, and reports for archaeological phases 1-3. They also include digital data such as shapefiles and .dgn files. For example, all end of field letter reports are due within two weeks of the final day of fieldwork completion. Due dates for reports for Phases 1 through 3 will be clearly specified in the SAC's proposal and will be dependent on the size and complexity of the project but it is expected that the SAC will meet those dates. Please also note that the final payment for the work authorization will not be sent until VTrans receives the final report and 100% of the project has been deemed complete. Failure to meet expected due dates for deliverables may result in a lower evaluation score and could affect the ability to obtain future contracts with VTrans.
2. **Monthly Reporting:** The SAC shall submit a status report to the Archaeology Staff by the end of each month detailing the status of all projects that VTrans has authorized under the contract. This report will include information on each project describing project tasks and the status of each task as to whether it has been completed, is underway, or waiting for VTrans review. Monthly report templates should include room for ongoing comments for the SAC to provide narrative updates as necessary. This monthly report will serve as a regular reminder of outstanding commitments on the part of both the SAC and VTrans. This is especially important for large projects and for phase 3 commitments as these tasks will need to be completed prior to the end of life of the contract.
3. **Professionals Needed:** The SAC will at minimum have the necessary professional staff personnel and resources to conduct all phases of pre-contact and historic archaeological study from ARA/Resource ID through Phase 3 Data Recovery. The SAC will directly employ the following positions in their organization:
 - a. **Professional Pre-contact Archaeologist:** This individual must have professional level knowledge of Pre-Contact archaeology. Knowledge and experience in Vermont Pre-Contact history is preferred. Specialization in one or more fields within the Pre-Contact time period is

desired (ex: lithic, pottery analysis, floral and faunal analysis) and the ability to understand Pre-Contact context for site interpretation.

- b. Professional Historic Archaeologist: This individual will have a professional level of knowledge within the historic time period from the Contact period to the present. The individual will be familiar with and be able to understand historic site contexts and recognize and interpret historic archaeological sites.
- c. Professional Laboratory Supervisor/Curator: This individual will be responsible for supervision within the lab, coordinating the cleaning and organization of artifacts and ensuring that artifacts are ready for long-term curation.
- j. GIS & Digital Data Expert (ex: GPS, GIS ArcMap, Web Site Development, CADD, GPR*, LiDAR*): The SAC will have a GIS & Digital Database Expert who will be responsible for coordinating the transfer of digital deliverables to VTrans. This individual may also be called upon in the field to assist field personnel with the collection of data or digital documentation of a site.
- k. Hazmat Trained Individual(s): at least one of these individuals must be a Crew Chief or Field Director position and must be trained at the HAZWOPER level which requires 40 hours of training with a certified Hazmat instructor. Other staff may be trained at this level or lower levels as necessary. The SAC will be responsible for ensuring that staff is Hazmat trained to the appropriate level.
- l. Business Office Manager: The Business Office Manager's roles may include but not be limited to the following activities - scheduling and assigning projects, providing monthly status reports to VTrans, invoice and billing, contact person for VTrans for accounting and financial issues, etc.
- m. Financial expert / billing specialist: This individual will be responsible for the financial responsibilities of the SAC (this expertise can be included in the Business Office Manager position or a separate position).

Sub-Consultants

The SAC may also be required to employ as necessary under a sub-consultant contract agreement the following professionals. All potential sub-consultants should be listed in the SAC's proposal at the start of the contract.

- a. Professional Historian
- b. Professional Underwater/Maritime Archaeologist
- c. Professional Architectural Historian
- d. Professional Geologist/Geomorphologist and/or Soil Scientist
- e. GPR and LiDAR experts** or professionals with working knowledge of and experience using these methods of data collection and recording.
- f. Backhoe operators – The SAC will not be required to list backhoe operators as sub-contractors, but it will be the responsibility of the SAC to notify the VTrans Archaeologist managing the active project if one is required for any phase of work. This will need to be done at least one month prior to when one is needed on site. As soon as the VTrans Archaeologist is notified by the SAC that an operator is needed, the VTrans Archaeologist will work with the Construction section to retain a backhoe operator from VTrans' list of qualified operators for the SAC. The SAC will then be notified of the selected operator and can coordinate as needed from that point.

*Please note that the SAC must obtain documented approval from VTrans for any sub-consultant that is not initially listed as a sub-consultant in the executed contract prior to hiring a sub-consultant for any individual project. The use of unauthorized sub-consultants may result in rejection of payment for invoices.

**GPR and LiDAR experience is not required of the SAC but it is preferred. VTrans relies heavily on digital data and consultants who have individuals with experience either under direct employment or as a sub-consultant will be given greater consideration. All professionals shall meet the Secretary of Interior's standards and/or the Society of Professional Archaeologists (SOPA) standards.

4. **Detailed Scope of Work (SOW) with Schedule:** A detailed SOW will be required for all Phases of archaeological study as previously stated within this document.

All SOWs will include a workday schedule beginning with Day 1 for all major tasks. Major tasks are outlined below.

- Date of Authorization letter
- Background research and preparation for fieldwork
- Fieldwork schedule
- Laboratory work
- End-at-Field Letter (due within two weeks after completion of fieldwork (See item #10 below)
- Draft report writing
- Draft report submission
- Draft report review by VTrans (30 days)
- Draft report revisions
- Final Report submittal and distribution of copies (one digital copy sent to VTrans, one digital copy sent to the State Historic Preservation Office at the Division for Historic Preservation)
- Complete Public Outreach & Education (this activity may begin at the fieldwork stage and continue to the Final Report)

Safety Regulations: The SAC shall be responsible for making sure that the proper safety apparel is worn by all personnel and that safety instructions are followed according to the guidelines and manuals listed below. The SAC personnel are required to wear high-visibility safety apparel to be in compliance with 23 CFR 634.3 whenever working in the highway right-of-way. Safety wear and reflective apparel must meet ANSI Class 3 standards. If the SAC is required to be on a construction site, they must wear hard hats, steel toe boots and vests at all times or they will not be permitted to enter the construction zone. They must also check in with the VTrans Resident Engineer prior to entering the construction zone.

If the SAC is working alongside the road and traffic control is necessary, field staff will have a working knowledge of and will utilize proper placement and positioning of cones, signs, flashers, etc. as stated in the Manual of Uniform Traffic Control Devices-2000 (MUTCD), Work Zone Traffic Control (Guide for Vermont Municipalities, May 1995), and Flagging Handbook (ATSSA-16 edition, May 1995). The SAC is responsible for supplying safety cones, signage, and flag persons; however, if lengthy or extensive traffic control is necessary, the SAC will coordinate with the VTrans Archaeologist managing the project assignment and the appropriate VTrans District personnel and other local safety officials as necessary. Occupational, Safety, and Health Administration (OSHA) regulations will be followed with regard to field conditions, especially when conducting excavation of deep holes into the ground. All SACs must contact DIG SAFE (1-888- 344-7233) before conducting any subsurface testing as a precaution to avoid underground utilities. If there is the potential for hazardous material on site, the SAC must have a certified hazmat trained individual(s), and contact VTrans' hazardous waste personnel and a VTrans Archaeologist prior to conducting work on the site.

COVID: The SAC must observe and obey any and all currently enforced Vermont State and/or local Covid protocols, whichever is higher, whenever conducting archaeological work in Vermont. The SAC may reach out to the VTrans Archaeologist for guidance, but it is ultimately the responsibility of the SAC to know and understand these protocols prior to conducting work within the state. These may change at any time depending on variants, and number of cases. It is the goal of VTrans to ensure the safety of its consultants as well as the general public with whom the consultant may interact.

Failure to comply with any State or local safety regulations and protocols may result in the loss of future work with VTrans.

5. **Management Plan:** The SAC will include a management plan for each project. The management plan details project steps from start to finish and identifies staff responsible for each task in the plan. The SAC must also demonstrate the ability to successfully undertake concurrent complex projects, each with multiple tasks (background work, fieldwork, lab work, writing, curation, editing, etc.) while working within the project schedule. VTrans field season can be very busy and the SAC may be called upon multiple times throughout the season. It is also possible that the SAC is involved with a Phase 3 Data Recovery Project that requires extensive personnel. This may result in the need to hire additional personnel to cover the workload and ensure that standards continue to be met. It is important that the archaeological fieldwork remain on schedule as much as possible so that the overall project schedule does not fall behind. This includes final report submittal. All work must be completed prior to the contract end date to the utmost extent possible.

APPENDIX A

VERMONT 106 PA WITH FHWA, SHPO, ACHP AND VTRANS 2021

8/12/2021

**PROGRAMMATIC AGREEMENT AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE VERMONT STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE VERMONT AGENCY OF TRANSPORTATION
REGARDING THE FEDERAL-AID HIGHWAY PROGRAM IN VERMONT**

WHEREAS, the Federal Highway Administration (FHWA), under the authority of 23 U.S.C. 101 et seq., implements the Federal-Aid Highway Program (Program) in the State of Vermont by funding and approving state and locally sponsored transportation projects that are administered by the Vermont Agency of Transportation (VTrans); and

WHEREAS, the Vermont FHWA Division Administrator is the “Agency Official” responsible for ensuring that the Program in the State of Vermont complies with Section 106 of the National Historic Preservation Act (NHPA)(54 U.S.C. § 306108), as amended, and codified in its implementing regulations, 36 CFR Part 800, as amended (August 5, 2004); and

WHEREAS, VTrans administers Federal-aid projects throughout the State of Vermont as authorized by Title 23 U.S.C 302; and

WHEREAS, the responsibilities of the Vermont State Historic Preservation Officer (SHPO) under Section 106 of the NHPA and 36 CFR Part 800 are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

WHEREAS, FHWA has determined that Federal Aid Transportation projects in VT processed as Categorical Exclusions under National Environmental Policy Act (NEPA) may have an effect upon properties included in, or eligible for inclusion in, the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14(b)of the regulations implementing Section 106 of the NHPA; and

WHEREAS, FHWA has consulted with federally recognized Indian tribes (Tribes) with ancestral lands in Vermont about this Programmatic Agreement (Agreement) and has requested their comments. These Tribes include the Stockbridge-Munsee Community, Cayuga Nation of Indians, Passamaquoddy Tribe-Point Pleasant Reservation, Wampanoag Tribe of Gay Head, Mashantucket Pequot Tribe, Narragansett Indian Tribe, Tuscarora Nation, Penobscot Nation, Passamaquoddy Tribe-Indian Township Reservation; and

WHEREAS, numerous attempts have been made to invite the aforementioned Tribes to participate in project level consultation as well as to participate in this Agreement. To date the Stockbridge-Munsee Mohican Tribe, Penobscot Nation, Mashantucket Pequot Tribe, and Narragansett Indian

Tribe have responded and desire to participate in project level consultation but, as of the date of this Agreement, none of the Tribes have agreed to join this Agreement as a consulting party; See Attachment 1 Tribal Consultation Protocol Matrix; and

WHEREAS, FHWA will continue to conduct outreach and will actively seek and request the comments and participation of Tribes that attach religious and cultural significance to historic properties that may be affected by undertakings reviewed under the terms of this Agreement; and

WHEREAS, pursuant to the consultation conducted under 36 CFR § 800.14(b), the signatories have developed this Agreement in order to establish an efficient and effective program alternative for taking into account the effects of the Program on historic properties in Vermont and for affording ACHP a reasonable opportunity to comment on undertakings covered by this agreement; and

WHEREAS, FHWA, VTrans, and SHPO have previously identified specific actions documented in Appendix A (incorporated herein by reference) as actions that will not require further review under Section 106; and

WHEREAS, VTrans employs cultural resources specialists and consultants who meet the Secretary of the Interior's Professional Qualification Standards (Federal Register 48:44738-44739) in the fields of archaeology and architectural history, to carry out its cultural resource programs and responsibilities; and

WHEREAS, the public has been invited to consult in the development of this Agreement through a Public Input website and social media accounts of VTrans and SHPO, and any comments received have been taken into account; and

WHEREAS, Certified Local Governments (CLGs) and state and federal agencies have been invited to consult in the development of this Agreement through a Public Input website and social media accounts of VTrans and SHPO, and any comments received have been taken into account; and

WHEREAS, VTrans has participated in the consultation and has been invited to be a signatory to this Agreement; and

WHEREAS, this Agreement supersedes the previous *Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Vermont State Historic Preservation Officer, and the Vermont Agency of Transportation Regarding Implementation of the Federal-Aid Highway Program in Vermont*, dated May 2019; and

WHEREAS, this Agreement may be superseded by a new agreement where the signatories agree through the development and execution of the new agreement. If this Agreement is superseded by a new agreement, this Agreement will have no further force or effect upon the execution of the superseding agreement; and

NOW, THEREFORE, FHWA, SHPO, ACHP, and VTrans agree that the Program in Vermont shall be implemented in accordance with the following stipulations in order to take into account the effects of the Program on historic properties in Vermont, and that these stipulations shall govern compliance of the Program with Section 106 of the NHPA until this Agreement expires, is terminated, or superseded.

To aid the signatories of this Agreement, the stipulations are organized in the following order:

- I. Applicability and Scope
- II. Definitions
- III. Professional Qualifications Standards
- IV. Responsibilities
- V. Consultation with Tribes
- VI. Participation of Other Consulting Parties and the Public
- VII. Review of Exempt and Screened Projects
- VIII. Review of Other Transportation Projects
- IX. Emergency Situations
- X. Post-Review and Unanticipated Discoveries
- XI. Identification and Treatment of Human Remains
- XII. Transfer of Archaeological Collections to the Vermont Archaeology Heritage Center
- XIII. Administrative Stipulations
- XIV. Resolution to Objections to Implementation
- XV. Amendment
- XVI. Termination
- XVII. Confidentiality
- XVIII. Duration of Agreement
- Appendix A: Exempt Activities
- Appendix B: Screened Activities
- Appendix C: List of Exceptional Culverts and Bridges
- Appendix D: Section 106 Flowchart

STIPULATIONS

FHWA, with the assistance of VTrans, shall ensure that the following stipulations are carried out:

I. APPLICABILITY AND SCOPE

- A. This Agreement sets forth the process by which FHWA will meet its responsibilities under Section 106 of the NHPA, with the assistance of VTrans, for transportation projects in the Federal-Aid Highway Program classified as categorical exclusions under 23 CFR § 771.115 and 23 CFR § 771.117 Federal Aid Transportation Projects in the State of Vermont. This Agreement establishes the basis for VTrans' review of individual Federal Aid Transportation Projects and how VTrans will notify and consult with SHPO, FHWA,

and individuals and organizations that may be invited to be Section 106 consulting parties. The objective of this Agreement is to make more efficient the methods by which FHWA and VTrans review individual undertakings that may affect historic properties and to establish the process by which FHWA, VTrans, SHPO, and ACHP will be involved in any such review.

- B. This Agreement applies to Categorical Exclusion level Federal Aid Transportation projects. Projects that require an Environmental Assessment or Environmental Impact Statement for compliance with NEPA are not covered by this Agreement and will be reviewed by FHWA and VTrans in accordance with the procedures of 36 CFR Part 800.
- C. Cooperating Federal Agencies that recognize FHWA as the lead Federal agency for an undertaking may fulfill their obligations under Section 106 of NHPA according to 36 CFR § 800.2(a)(2), provided that FHWA and VTrans follow the requirements of this Agreement and the cooperating agency's undertaking does not have the potential to cause effects to historic properties beyond those considered by FHWA and VTrans.
- D. At any time, VTrans may choose to conduct the Section 106 review for a Federal Aid Transportation Project by following the procedures in 36 CFR Part 800 rather than by following the procedures in this Agreement. VTrans and FHWA will also conduct the Section 106 review for a Federal Aid Transportation Project under the procedures in 36 CFR Part 800 if SHPO, ACHP, or FHWA so requests. Undertakings resulting in Adverse Effects shall follow the procedures in 36 CFR Part 800.
- E. State-funded actions that do not involve FHWA federal funding or permits are not subject to the terms of this Agreement.

II. DEFINITIONS

- A. For purposes of this agreement, the definitions provided in 36 CFR § 800.16(a) through (z) shall apply whenever applicable.
- B. *Federal Aid Transportation Project*: An undertaking that is classified as a Categorical Exclusion under 23 CFR § 771.115 and 23 CFR § 771.117.
- C. *Exempt Activities*: Undertakings that typically have no appreciable potential to cause effects to historic properties. Examples include pavement resurfacing, installation of fencing, construction of bicycle/pedestrian lanes, installation of rumble strips, and landscaping in previously disturbed ground. Work is limited to the activities listed in Appendix A. An undertaking will not qualify as exempt from review if conditions must be imposed to ensure that potential historic properties would not be affected.
- D. *Projects with no potential to cause effect* 36 CFR 800.3(a)(1): are defined as those actions that by their nature, will not result in effects to historic properties. FHWA defines these to only non-construction related activities. For example, purchasing equipment, planning, and design all fall under this portion of the regulation and do not require any further obligations under Section 106. All other construction with a federal nexus must comply with 36 CFR 800 including any maintenance, new construction, and all construction-related actions. Questions about applicability should be referred to the FHWA Federal Preservation Officer (FPO).

- D. *Screened Activities*: Undertakings that have some potential to affect historic properties. Following appropriate screening by qualified professionals, some may be determined exempt from further Section 106 review under this agreement. Work is limited to the activities listed in Appendix B.
- E. *Ground disturbance*: Defined as any work or activity that results in a disturbance of the earth, including excavating, digging, trenching, drilling, augering, backfilling, clearing, and grading.

III. PROFESSIONAL QUALIFICATIONS STANDARDS

- A. VTrans shall employ full-time staff members, including an archaeologist and an architectural historian (Qualified Staff). Qualified Staff and qualified professionals (consultants) shall conduct Section 106 work, provide project reviews, and provide quality control on all Section 106 work. Qualified Staff responsible for project reviews and VTrans' contracted consultants who conduct Section 106 work must meet the Secretary of the Interior's Professional Qualifications Standards (Federal Register 48:44738-44739). VTrans will consult with SHPO in the selection of individuals to fill Qualified Staff positions.
- B. If VTrans does not maintain the employment of Qualified Staff or if Qualified Staff are unable to fulfill Program responsibilities due to extended leave or other circumstances, VTrans will notify FHWA and SHPO within thirty (30) days of the staffing shortage. VTrans may, in consultation with SHPO, appoint acting Qualified Staff who meet the Secretary of the Interior's Professional Qualifications Standards (Federal Register 48:44738-44739). If the vacancy is not filled with permanent Qualified Staff within one hundred eighty (180) days of the start of the staffing shortage, this Agreement will be temporarily suspended until permanent Qualified Staff are retained unless FHWA, VTrans, and SHPO agree in writing to an extension.

IV. RESPONSIBILITIES

The following section identifies the responsibilities of FHWA and VTrans in complying with the terms of this Agreement.

A. FHWA Responsibilities

1. Consistent with the requirements of 36 CFR §§ 800.2(a) and 800.2(a)(1-4), FHWA remains legally responsible for ensuring that the terms of this Agreement are carried out and for all findings and determinations made pursuant to this Agreement by VTrans under the authority of FHWA. At any point in the Section 106 process, FHWA may inquire as to the status of any undertaking carried out under the authority of this Agreement and may participate directly in any undertaking at its discretion.
2. FHWA retains the responsibility for government-to-government consultation with Tribes as defined in 36 CFR § 800.16(m). FHWA may ask VTrans to assist in consultation if the individual Tribe(s) agree to alternate procedures.
3. FHWA shall be responsible for resolving disputes and objections pursuant to Stipulation XIV of this Agreement.

4. FHWA will ensure that the steps in the Section 106 process are coordinated with Section 4(f) of the Department of Transportation Act and the National Environmental Policy Act, in accordance with 36 CFR § 800.3(b).
5. Upon notification by VTrans that an undertaking may result in an Adverse Effect to historic properties, FHWA will ensure the Section 106 review process is initiated and completed, including notification to ACHP, in accordance with 36 CFR § 800.6.

B. VTrans Responsibilities

Under the authority of FHWA, VTrans may carry out the following steps with respect to undertakings covered by this Agreement. These responsibilities include carrying out the following requirements:

1. Determine under 36 CFR § 800.3(a) whether the undertaking is a type of activity that has the potential to cause effects on historic properties.
2. Solicit public comment and involvement in accordance with 36 CFR § 800.3(e) and VTrans' "Engaging the Public: Outreach Guidelines for Projects, Plans and other Agency Activities."
3. Identify additional consulting parties as described in 36 CFR § 800.3 and invite them to participate in the undertakings covered by this Agreement, as appropriate with project type and complexity.
4. Prepare appropriate documentation for FHWA's consultation with Tribes.
5. Determine and document the scope of identification efforts and level of efforts as described in 36 CFR § 800.4(a) and (b)(1), including the boundaries of the undertaking's area of potential effects (APE).
6. Determine the eligibility of properties within the APE for listing in the NRHP per 36 CFR § 800.4(c) and (d).
7. Determine whether historic properties may be affected by the undertaking by applying the criteria of Adverse Effect as described in 36 CFR § 800.5(a)(1).
8. When VTrans recommends that an undertaking will have an Adverse Effect on historic properties, it will notify FHWA and initiate consultation with SHPO and other consulting parties to resolve the Adverse Effects in accordance with 36 CFR § 800.6, including alternatives to avoid, minimize, or mitigate Adverse Effects to historic properties resulting from the undertaking. Such alternatives or mitigation will be documented in a Section 106 Memorandum of Agreement or Project Programmatic Agreement executed by FHWA, VTrans, SHPO, and ACHP (if participating in consultation).
9. Provide FHWA copies of all correspondence sent out on its behalf (e.g. letters to SHPO or Tribes).
10. Provide SHPO copies of documents produced in connection with Items 1. to 9. above.

C. SHPO Responsibilities

1. The SHPO is responsible for responding to FHWA and VTrans requests according to the terms of this Agreement.
2. The SHPO will participate in site visits and meetings to discuss large or complex undertakings upon request by VTrans or FHWA, as staff time and resources permit.

D. ACHP Responsibilities

1. The ACHP shall be notified of findings of adverse effect by the applicable lead federal agency and shall be invited to participate in resolving the adverse effect of an undertaking in accordance with 36 CFR 800.6(a)(1).
2. The ACHP shall participate, in accordance to Stipulation XIV, in the resolution of disputes that may occur through the implementation of this Agreement.

V. CONSULTATION WITH TRIBES

- A. FHWA shall take the lead in identifying and establishing consultation with Indian tribes consistent with the requirements of 36 CFR § 800.2(c)(2) and 36 CFR § 800.3(c)-(f). VTrans may provide general coordination information to Tribes but FHWA shall retain ultimate responsibility for complying with all federal requirements pertaining to government-to-government consultation with Tribes.
- B. In accordance with 36 CFR § 800.3(f)(2), any Tribe that might attach religious and cultural significance to historic properties in the APE shall be identified by VTrans and invited, in accordance with 36 CFR § 800.3(f)(2), by FHWA to be consulting parties.
- C. VTrans shall provide FHWA information from which FHWA can initiate consultation with Tribes early in the project planning process to identify cultural, confidentiality, or other concerns, and to allow adequate time for consideration.
- D. FHWA shall ensure that consultation continues with Tribes throughout the Section 106 review process prescribed by this Agreement whenever such Tribes express a concern about an undertaking or about historic properties that may be affected by an undertaking.
- E. Attachment 1, Tribal Consultation Protocol Matrix, contains the most current Tribal protocol processes and agreements.

VI. PARTICIPATION OF OTHER CONSULTING PARTIES AND THE PUBLIC

A. Other Consulting Parties

1. VTrans shall identify other consulting parties as described in 36 CFR § 800.3 and invite them to participate in the undertakings covered under this Agreement. Written requests by individuals, organizations, and agencies to become consulting parties will be evaluated on a case-by-case basis by VTrans and FHWA. For undertakings determined to have an Adverse Effect on historic properties, SHPO shall be consulted to identify any other parties entitled to be consulting parties.

B. Public Involvement

1. Public involvement in planning and implementing undertakings covered by this Agreement shall be governed by FHWA's and VTrans' environmental compliance procedures. VTrans' "Engaging the Public: Outreach Guidelines for Projects, Plans and other Agency Activities" provides guidance for identifying, informing, and involving the public. FHWA's Technical Advisory and similar and subsequent guidance documents will also be used. Public involvement and the release of information hereunder shall be consistent with 36 CFR §§ 800.2(d) and 800.3(e).
2. VTrans shall continue to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties, to remain consistent with the intent of 36 CFR Part 800, as amended.
3. For those actions that do not routinely require public review and comment (e.g., exempt or screened activities), appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of historic properties, and the undertaking's potential impacts on them.
4. VTrans shall make FHWA and SHPO aware of any and all public controversy as it relates to the historic properties potentially affected by the proposed undertaking, including properties of religious and/or cultural significance to the Tribes.

VII. REVIEW OF EXEMPT AND SCREENED PROJECTS

Referencing Appendices A, B, and C of this Agreement, Qualified Staff may make a determination that an undertaking is a type of activity/activities that has minimal potential to affect historic properties. As such, the undertaking will not require additional Section 106 review or consultation with SHPO as long as the undertaking is limited to the activities specified in Appendices A and B, meets all the terms and conditions in Appendices A and B, and is not part of larger undertaking. VTrans may add Federal Aid transportation projects to the list in Appendices A and B upon written concurrence by all parties to this Agreement.

- A. **Appendix A** Lists Exempt Activities that shall require no consultation with SHPO. For projects that are limited to the activities listed in Appendix A, VTrans staff will document the finding that the project has minimal potential to affect historic properties and therefore requires no further coordination and maintain that document in its project file.
- B. **Appendix B** lists Screened Activities that require review by Qualified Staff to determine whether a project addressing the listed activities meets all the terms and conditions of Appendix B and that no particular circumstances exist that would call for additional review. If no such circumstances exist, Qualified Staff will document the finding that the project does not require any further review and maintain that document in the project file. A list of undertakings determined to be screened activities for the federal fiscal year (October 1 to September 30) shall be provided to SHPO annually by November 15 for inclusion in the annual reporting to the National Park Service by SHPO.
- C. **Appendix C** includes a list of culverts and bridges identified as exceptional. VTrans shall complete a full Section 106 review of a project on the state highway system that has the

potential to affect any of the exceptional culverts listed in Appendix C. Culverts on the state highway system that are not on the list in Appendix C are not considered exceptional or historically/architecturally significant. Projects on the state highway system involving non-historic culverts can be cleared using Appendix B Screened Activities.

- D. If Federal Aid Transportation project does not meet the terms and conditions for Appendices A, B, and C or if there are special circumstances, the project shall be reviewed under the provisions of Stipulation VIII.

VIII. REVIEW OF OTHER FEDERAL AID TRANSPORTATION PROJECTS

For Federal Aid Transportation Projects that are not listed in Appendices A and B, Qualified Staff will employ a multi-disciplinary approach that meets the requirements of 36 CFR § 800.3 and 36 CFR § 800.4. Qualified Staff may address multiple steps simultaneously.

- A. **VTrans Review:** VTrans will initiate the Section 106 process and identification of historic properties by carrying out the following steps in conformance with the process outlined in the regulations implementing Section 106:

1. Initiate the Section 106 process in accordance with the procedures in 36 CFR § 800.3, including establishing whether there is an undertaking, coordinating with other reviews, planning to involve the public, and identifying and inviting other consulting parties, as appropriate; and
2. Determine the project's APE, as defined in 36 CFR § 800.16(d); and
3. Review existing information on file at Division for Historic Preservation (including the State Register of Historic Places, NRHP, Vermont Archaeological Inventory [VAI], and survey documentation) concerning the APE; and
4. Assess the likelihood that unidentified historic properties exist in the APE; and
5. Determine the degree of existing disturbance within the APE and determine whether an archaeological or historic architectural survey is needed; and
6. Perform archaeological or historic architectural field reconnaissance and/or intensive surveys, as warranted, in conformance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation: Identification (1983, as revised in the 48 FR 44716) and SHPO's "Guidelines for Conducting Archaeology in Vermont."
 - a. If an archaeological investigation is performed, Archeological Resource Assessment, Phase I Site Identification, and Phase II Site Evaluation reports shall be prepared as appropriate. A VAI site form will be prepared for all identified archaeological sites or districts. Documentation shall be forwarded to SHPO.
 - b. SHPO's Vermont Architectural Resource Inventory Form (VARI) will be prepared for any property that will be affected by a project and that is found eligible for listing in the NRHP by VTrans or SHPO. Documentation shall be forwarded to SHPO.

B. Eligibility Evaluations and Assessments of Effect

1. As part of VTrans' performance under Stipulation VIII.A of this Agreement, Qualified Staff will apply the NRHP criteria in 36 CFR § 60.4 to properties identified within the APE.

a. Properties affected by the undertaking, and not previously identified, will be evaluated to determine if such properties are NRHP eligible in accordance with 36 CFR § 800.4(c)(1), and, if so, make the eligibility determination on the VTrans Determination of Eligibility (VTrans DOE) form.

i. If properties not previously evaluated are found to not be NRHP eligible in accordance with 36 CFR § 800.4(c)(2), VTrans will document this work as part of their assessment of effect and forward to SHPO as described in Section VIII.

D.

b. VTrans shall review previous determinations of eligibility to evaluate if the affected historic property retains sufficient integrity and forward any recommended changes to previous determinations to SHPO.

c. To assist SHPO with the required federal reporting, VTrans shall include in the annual report data about all determinations of eligibility recommendations made during project reviews, including for properties found to be eligible for listing in the NRHP, not eligible for listing in the NRHP, and those properties previously listed in the NRHP but that have been altered to a degree that they may no longer qualify for listing.

C. Notification and Consultation with FHWA, SHPO, and Consulting Parties

1. **Finding of No Historic Properties Affected.** Where, as a result of its Stipulation VIII. A review, it is determined that there are no NRHP-listed or -eligible properties within the APE that will be affected, Qualified Staff shall make a finding, pursuant to 36 CFR § 800.4(d)(1) of No Historic Properties Affected. VTrans may consult with SHPO regarding application of the 36 CFR § 800.4 criteria. No further review under Section 106 is required for a finding of No Historic Properties Affected unless the scope of work or APE limits change, thus requiring additional review. Related documentation shall be forwarded to SHPO as described in Section VIII. D.

2. **Finding of No Adverse Effect.** For any Federal Aid Transportation Project that includes, within the APE, NRHP-listed or -eligible properties, Qualified Staff will apply the criteria of Adverse Effect set forth in 36 CFR § 800.5(a) to determine the effects of the undertaking on historic properties. Related documentation shall be forwarded to SHPO as described in Section VIII. D.

a. VTrans shall identify and engage parties per Section VI. A for consultation as appropriate. If the effects are determined to not be adverse, Qualified Staff shall make a finding of No Adverse Effect.

b. VTrans shall include the following documentation in the project file:

i. Any records on consultation

ii. Any records on efforts to identify historic properties

iii. Any findings of eligibility

- iv. Any findings of effect
- v. Any records on resolving adverse effects.
- c. VTrans shall make documentation concerning a finding of No Adverse Effect available for public inspection (subject to confidentiality provisions) prior to approving the undertaking. Contact information and instructions for public inspection of documentation shall be posted on VTrans' website. No further review under Section 106 is required for a finding of No Adverse Effect unless the scope of work or APE limits change, thus requiring additional review. Final documentation shall be forwarded to SHPO as described in Section VIII. D.

3. Recommendation of Adverse Effect.

- a. Projects that include, within the APE, NRHP-listed or -eligible properties that will or may be adversely affected by the project, as defined by the criteria of Adverse Effect set forth in 36 CFR § 800.5(a), shall be reviewed in accordance with the procedures of 36 CFR Part 800.
- b. National Historic Landmarks. If Qualified Staff determine that an undertaking may adversely affect a National Historic Landmark, VTrans shall request SHPO, ACHP, and the Secretary of the Interior to participate in consultation to resolve any adverse effects, as outlined in 36 CFR § 800.10.

D. VTrans Submittal and SHPO Consultation.

- 1. A full documentation package including APE, VTrans DOE, archaeology reports, VAI and VARI forms, and Assessment of Effect shall be submitted to SHPO within 30 days of making a determination of eligibility and finding of effect. The Eligibility Evaluation and Assessment of Effect may be submitted to SHPO separately or as one documentation packet.
- 2. For projects resulting in No Historic Properties Affected and No Adverse Effects, if SHPO does not object within 14 days of receipt of an adequately documented APE, Eligibility Evaluation y, and Assessment of Effect, the agency official's responsibilities under Section 106 are fulfilled under 36 CFR § 800.4 and § 800.5. Consultation review periods for emergency situations may be less than 14 days; see Section IX.
- 3. Documentation for Adverse Effect projects shall be reviewed in accordance with the procedures of 36 CFR Part 800.

E. Project Re-evaluation

- 1. At any time, if an undertaking changes in the lead federal agency designation, scope, funding, or APE, the VTrans Qualified Staff shall re-assess the previous findings issued by their respective specialties to determine if the findings remain valid or if additional survey, eligibility evaluation, or effects assessment are required. All determinations shall be provided to the new lead federal agency for review and comment.
- 2. Should SHPO or a member of the public provide new information regarding an undertaking that would alter the re-evaluation determination made above, FHWA, VTrans, SHPO, and consulting parties shall consult pursuant to 36 CFR 800.4-6 and 800.13. Such information shall be provided to VTrans in a timely manner.

3. Additional Section 106 consultation shall not be required if less than ten (10) years have passed since the full project survey and evaluation for historic properties, not including archaeological resources, was completed and concurred with by SHPO, or Right of Way (ROW) has been authorized.

IX. EMERGENCY SITUATIONS For the purposes of this Agreement, emergencies are defined as occurrences that require emergency action on the highway system and/or facility repairs that are necessary to 1) protect the life, safety, or health of the public; 2) minimize the extent of damage to the highway system and facilities; 3) protect remaining highway facilities; or 4) restore essential traffic. The following stipulations apply to emergency situations:

- A. Activities that consist of immediate rescue and salvage operations conducted to preserve life or property from death or destruction such as necessitate by a natural disaster or other catastrophic event are exempt from Section 106 review, in accordance with 36 CFR § 800.12(d). Actions to address emergency situations as defined above can occur regardless of funding category, and regardless of declarations made by federal, state, or local agencies.
- B. Written notification of an emergency action shall be provided to the SHPO directly. The notice shall be clearly and prominently marked as an emergency notification and shall include an explanation of how the action meets the requirements for emergency as defined herein.
- C. If VTrans Qualified Staff anticipate, or have determined, the emergency action will adversely affect historic properties, VTrans' Qualified Staff shall notify SHPO, FHWA, Tribes, and ACHP prior to any resolution or mitigation of Adverse Effects. SHPO, FHWA, ACHP, and any Tribe that may attach religious and cultural significance to historic properties likely to be affected will have seventy-two (72) hours to respond.

X. POST-REVIEW AND UNANTICIPATED DISCOVERIES

A. Planning for Subsequent Discoveries.

1. When VTrans' identification efforts indicate that historic properties are likely to be discovered during implementation of an undertaking, VTrans shall include in any environmental document, contract, and specifications a plan for discovery of such properties. Implementation of the plan as originally proposed or modified as necessary owing to the nature and extent of the properties discovered, will be in accordance with 36 CFR § 800.4 through 36 CFR §800.6.

B. Unanticipated Discoveries.

- 1. If previously unidentified archaeological or historic properties, or unanticipated effects, are discovered after VTrans has completed its review under this Agreement, that portion of the project will stop immediately.
- 2. No further construction in the area of discovery will proceed until the requirements of 36 CFR § 800.13 and NAGPRA implementing regulations at 43 CFR § 10, if applicable, have been satisfied, including consultation with Tribes that may attach traditional cultural and religious significance to the discovered property.

3. VTrans will consult with SHPO and Tribes, as appropriate, to record, document, and evaluate NRHP eligibility of the property and the project's effect on the property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property.
4. If neither SHPO nor a Tribe files an objection within seventy-two (72) hours of VTrans' plan for addressing the discovery, VTrans may carry out the requirements of 36 CFR § 800.13 on behalf of FHWA, and ACHP does not need to be notified.

XI. IDENTIFICATION AND TREATMENT OF HUMAN REMAINS

- A. In the event that human remains are identified prior to, during, or after project construction, that portion of the project will stop immediately. The remains will be respectfully covered, and the Resident Engineer will immediately contact the local police and the Office of the Chief Medical Examiner. VTrans will also notify FHWA, SHPO, and the State Archaeologist. VTrans will develop a treatment plan in consultation with FHWA and SHPO. If it is determined that the human remains are associated with a Native American occupation, VTrans and FHWA will consult with the Tribes prior to the development or execution of a treatment plan.

XII. TRANSFER OF ARCHAEOLOGICAL COLLECTIONS TO THE VERMONT ARCHAEOLOGY HERITAGE CENTER

FHWA and VTrans will ensure that any significant cultural material collected during archaeological reconnaissance and archaeological intensive investigations on state-owned land or donated materials recovered from privately owned land will be transferred to the Vermont Archaeology Heritage Center. This will take place after the conclusion of a project following the guidance of the "Guidelines for Conducting Archaeology in Vermont."

XIII. ADMINISTRATIVE STIPULATIONS

- A. **Annual Evaluation.** VTrans, FHWA, and SHPO agree to hold an annual evaluation in conjunction with the Vermont Advisory Council on Historic Preservation (VACHP) at the March ACHP Meeting to review implementation of the terms of this Agreement. By December 15 of each year, VTrans shall submit a report to FHWA and SHPO reflecting the activities applicable under this Agreement for the period between October 1 and September 30. The annual report will include:
 1. List in table form identifying all Federal Aid Transportation Project undertakings processed under this Agreement from the previous period between October 1 and September 30 and specifying project names, towns, and all findings pursuant to 36 CFR Part 800; and
 2. List of all Appendix B findings signed by Qualified Staff; and
 3. Data related to determinations of NRHP eligibility evaluations; and
 4. Assessment of the effectiveness of the Agreement, discussion of concerns with the Agreement, and include recommendations for changes to the Agreement, if any; and

5. Bibliography of archaeological and architectural reports completed during the year.
- B. SHPO shall provide a copy of the VTrans annual report to the VACHP upon receipt in preparation for the annual evaluation meeting in March.
- C. VTrans, FHWA, and SHPO shall meet bi-annually (not including the Annual Meeting) to share information and engage in continuing dialog on programs, process, initiatives, and projects of significance, including all Section 106 Memoranda of Agreement and Programmatic Agreements. VTrans will coordinate these meetings and any signatory party may propose a meeting and agenda items.
- D. FHWA, ACHP, and SHPO may monitor activities carried out pursuant to this Agreement. VTrans will cooperate with these parties in carrying out their monitoring efforts.
- E. Understanding that education, public outreach, planning and research, and improving efficiencies in data recordation and presentation are important aspects of cultural resource stewardship, parties to this Agreement will seek opportunities to collaborate where appropriate and feasible on these initiatives as they relate to transportation projects and the affected resources. Activities may include, but are not limited to, data synthesis and mapping, development of statewide thematic surveys and historic contexts, conservation and exhibition of archaeological materials, public outreach events, and the adoption and implementation of new and emerging technologies.

XIV. RESOLUTION TO OBJECTIONS TO IMPLEMENTATION

- A. Resolving Objections to Implementation of this Agreement
 1. Should any signatory party object in writing to FHWA regarding the way the terms of this Agreement are carried out, FHWA will immediately notify the other signatory parties of the objection and proceed to consult with the objecting party to resolve the objection. FHWA will honor the request of any signatory party to participate in the consultation and will take any comments provided by such parties into account. FHWA shall establish a reasonable time frame for such consultations.
 2. If the objections—other than a determination of eligibility—is resolved through consultation, FHWA may authorize the disputed action to proceed in accordance with the terms of such resolution.
 3. If after initiating such consultation, FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to ACHP and other signatory parties, including FHWA’s proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:
 - a. Advise FHWA that ACHP concurs in FHWA’s proposed response to the objection, whereupon FHWA will respond to the objection, accordingly; or
 - b. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or

- c. Notify FHWA that the objection will be referred for comment pursuant to 36 CFR § 800.7(a)(4) and proceed to refer the objection and comment. In this event, FHWA, as the Agency Official, shall ensure that the resulting comments taken into account are in accordance with 36 CFR § 800.7(~)(4).
 4. Should ACHP not exercise one of the foregoing options within thirty (30) days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection.
 5. FHWA shall take into account any ACHP recommendation or comment and any comments from the other signatory parties to this Agreement in reaching a final decision regarding the objection. FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.
 6. FHWA shall provide all other signatory parties to this Agreement with a written copy of its final decision regarding any objection addressed pursuant to this Stipulation.
 7. FHWA may authorize any action subject to objection under this Stipulation to proceed, provided the objection has been resolved in accordance with the terms of this Stipulation.
 8. At any time during implementation of this Agreement, should any member of the public raise an objection in writing pertaining to such implementation to any signatory party to this Agreement, that signatory party shall immediately notify FHWA. FHWA shall immediately notify the other signatory parties in writing of the objection. Any signatory party may choose to comment on the objection to FHWA. FHWA shall establish a reasonable time frame for this comment period. FHWA shall consider the objection, and in reaching its decision, FHWA will take all comments from the other parties into account. Within 15 days following closure of the comment period, FHWA will render a decision regarding the objection and respond to the objecting party. FHWA will promptly notify the other parties of its decision in writing, including a copy of the response to the objecting party. FHWA's decision regarding resolution of the objection will be final. Following the issuance of its final decision, FHWA may authorize the action subject to dispute hereunder to proceed in accordance with the terms of that decision.
- B. Objections to Determination of Eligibility: Should any signatory party object to a determination of eligibility, FHWA will submit the determination to the Keeper of the National Register of Historic Places for resolution.

XV. AMENDMENT

- A. Any signatory party to this Agreement may at any time propose amendments, whereupon all signatory parties shall consult to consider such amendment. This Agreement may be amended only upon written concurrence of all signatory parties.

XVI. TERMINATION

- A. Any signatory party may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XV, or if any signatory party proposes termination of this Agreement for other reasons, the party proposing termination shall notify the other signatory parties in writing, explain the reasons for proposing termination, and consult with

the other parties for no more than thirty (30) calendar days to seek alternatives to termination.

- B. In the event of termination, FHWA would carry out the requirements of 36 CFR Part 800 with regard to individual Federal Aid Transportation Projects covered by this Agreement.

XVII. CONFIDENTIALITY

All parties to this Agreement acknowledge that information about historic properties, potential historic properties, or properties considered historic for purposes of this Agreement are or may be subject to the provisions of Section 304 of NHPA. Section 304 allows FHWA to withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if VTrans determines that disclosure may 1) cause a significant invasion of privacy; 2) risk harm to the historic resource; or 3) impede the use of a traditional religious site by practitioners. Having so acknowledged, all parties to this Agreement will ensure that all actions and documentation prescribed by this Agreement are, where necessary, consistent with the requirements of Section 304 of the NHPA.

XVIII. DURATION OF AGREEMENT

This Agreement shall remain in effect for a period of two (2) years after the date it takes effect unless it is extended or terminated prior to that time. No later than ninety (90) days prior to the conclusion of the two (2) year period, FHWA will notify all parties in writing of their intention to extend this PA. If there are no objections from consulting parties, the term of the Agreement will be extended for an additional two (2) years up to a limit of five (5) years with written consent from all signatories. If any party objects to extending the Agreement, or proposes amendments, VTrans will consult with the parties to consider amendments or other actions to avoid termination. The Effective Date shall be the date the last party signs this Agreement.

Execution and implementation of this agreement evidence that FHWA has delegated certain Section 106 responsibilities to VTrans and has afforded ACHP a reasonable opportunity to comment on the Program and its individual undertakings in Vermont; that FHWA has taken into account the effects of the program and its individual undertakings on historic properties; and that FHWA has complied with Section 106 of the NHPA and 36 CFR Part 800 for the Program and its individual undertakings.

Signatories:

Matthew Hake

MATTHEW R
HAKE

Digitally signed by MATTHEW R
HAKE
Date: 2021.07.12 13:45:12 -0400

Matthew R. Hake, Division Administrator
Federal Highway Administration

07/12/2021

Date

Jordan E. Tannenbaum, Vice Chairman
Advisory Council on Historic Preservation

E-SIGNED by Laura V. Trieschmann
on 2021-07-26 13:03:55 GMT

Date

Laura V. Trieschmann
Vermont State Historic Preservation Officer

Date

Invited Signatory:

E-SIGNED by Joe Flynn
on 2021-07-23 18:30:23 GMT

Joe Flynn, Secretary
Vermont Agency of Transportation

Date

Approved as to Form:

E-SIGNED by AOT Legal
on 2021-07-23 18:05:55 GMT

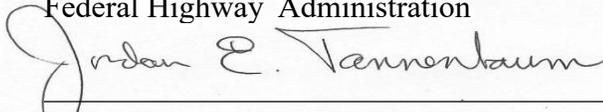
Assistant Attorney General

Date

Signatories:

Matthew R. Hake, Division Administrator
Federal Highway Administration

Date



Jordan E. Tannenbaum, Vice Chairman
Advisory Council on Historic Preservation

8.12.2021

Jordan E. Tannenbaum, Vice Chairman
Advisory Council on Historic Preservation

Date

Laura V. Trieschmann
Vermont State Historic Preservation Officer

Date

Invited Signatory:

Joe Flynn, Secretary
Vermont Agency of Transportation

Date

Approved as to Form:

Assistant Attorney General

Date

**APPENDIX A
EXEMPT ACTIVITIES**

If the proposed project involves only those activities listed in Appendix A as “Exempt Activities,” a VTrans Environmental Specialist or Qualified Staff will complete the Exempt Activity Form and Send a copy with the project. No Further review under Section 106 is required. All work for Appendix A activities is conducted from the road surface and is contained within the road prism.

Section A: Bridge Repairs/Bridge Maintenance on VTrans Federal Aid Projects

No.	Activity	Description
1.	Bridge washing and Cleaning	Includes clean drainage scuppers and drainpipes, as well as removal of vegetation to allow access for inspection team or repairs
2.	Culvert replacement – In-kind	Replacement of culverts constructed of corrugated metal and/or plastic pipe, provided work is conducted from road surface and contained within the road prism <ul style="list-style-type: none"> • Excluding stone headwall work • Concrete headwall work is exempt
3.	Repair/replace bridge expansion-joints	
4.	Reset bridge bearings	Strengthening bearings by jacking bridge less than 1-inch and replacing or repairing.
5.	Pile encasement for steel bridges	Reinforcement of piles with concrete sheaths including: <ul style="list-style-type: none"> • Addition of concrete encasement approximately 6-inches in diameter • Placement of temporary fill for dewatering activities
6.	Repair/replace portions of approach slabs & bridge deck – In-kind	Includes the following activities: <ul style="list-style-type: none"> • Overlay with permanent asphalt • Filling voids
7.	Post-tension duct repair/internal post-tensioning	Steel strands through ducts formed in the concrete then grouted in place
8.	Repair/replace co-polymer overlay on deck	Replaced with conductive polymer overlay system to protect concrete bridge deck and improve friction

Section B: Pavement Resurfacing/Shoulder Rehabilitation and Guardrail/Cable/Median Barriers on VTrans Federal Aid Projects

No	Activity	Description
1.	Roadway resurfacing and or rehabilitation	<p>Includes the following activities for asphalt roadways:</p> <ul style="list-style-type: none"> • Overlay • Sealing • Milling • Filling • Grinding • Grooving • Crack repair • Rut repair • Pothole filling • Chip seal (AST/BST) • Patching • Resurfacing to subbase • Installation of rumble strips, rumble stripes, line striping, and traffic sensors <p>Includes the following activities for concrete roadways:</p> <ul style="list-style-type: none"> • Grinding • Grooving • Pavement rehabilitation • Spall repair <p>Includes in-kind repair/replacement of guardrail</p>
2.	Slope repair	Repair of failed slopes within the existing road prism, provided work can be performed from the road surface and contained within the road prism

Section C: Miscellaneous

No.	Activity	Description
1.	Enhancements, Park & Rides, Rest Areas, etc.	Maintenance and minor improvements to existing park & rides withing existing boundaries where no excavations will take place
2.	Purchase of equipment	
3.	Preliminary engineering activities	Activities that do not involve or lead directly to construction (program activities), such as planning and research activities; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which

		establish classes of highways on the Federal-aid highway system – 23 CFR 771.117 (c)(1)
4.	Pavement markings	Includes installation of the following: <ul style="list-style-type: none"> • Rumble strips, chevrons, stop bars, and other pavement markings (raised, reflective, otherwise) • Additional or replacement roadway striping

**APPENDIX B
SCREENED ACTIVITIES**

If the proposed project involves only those activities listed in Appendix B as “Screened Activities,” the VTrans Qualified Staff will complete a Screened Activity Form and save a copy with the project file. SHPO will be notified annually of the projects that have been processed using the Screened Activities list. No Further review under Section 106 is required.

Section A: Bridge Repairs/Bridge Maintenance on VTrans Federal Aid Projects

No	Activity	Description
1.	Exceptional Culverts	<p>VTrans shall complete a full Section 106 review of a project on the state highway system that has the potential to affect any of the exceptional culverts listed in Appendix C. Culverts on the highway system that are not on the list in Appendix C are not considered exceptional or historic. Projects on the state highway system involving non-historic culverts can be cleared using the Screened Activities review template</p> <p>In-kind repair and replacement of concrete headwalls provided all work is conducted from the road surface and/or contained within the road prism is a Screened Activity</p>
2.	Full deck replacement	
3.	Miscellaneous repair or replacement of superstructure and substructure elements	Repair or replacement activities to the superstructure and substructure such as pavement, joints, decks, railings, abutments, and drainage systems, where work and access are limited to previously disturbed and non-archaeologically sensitive areas within the ROW
4.	Bridge jacking	<p>Includes the following activities:</p> <ul style="list-style-type: none"> • Increase vertical clearance by elevating the bridge through use of bearings • Approaches are modified, as needed, within existing roadway
5.	Scour repair – repair undermined abutment caps	Fill voids with flowable fill or other stable material, includes screening of any proposed access required for work
6.	Scour repair – replacement of floor beams	<p>Includes the following activities:</p> <ul style="list-style-type: none"> • Removal of concrete and rebar and subsequent setting of pre-stressed concrete or steel beams. • Placing of framework, rebar, and concrete provided work can occur within the existing ROW
7.	Scour repair – replacement of rip-rap or fill	In-kind replacement over existing materials at bridge bents and/or abutments as a result of a washout
8.	Repair/replace bridge headers, voids, end-and back-walls,	Activities confined to the bridge structure itself

	concrete bent caps, bridge/pot bearings	
9.	Abutment slope repair	Activities confined to the bridge structure itself
10.	Steel bridge painting	Reapplication of paint for steel bridge structures, H-piling, metal shell piling, and steel sway bracing
11.	Installation of crutch or helper bents	Additional supports or shoring in the event of what is in place is not adequate
12.	Repair/replace existing box-girder drainage system	Drainage system found on larger bridges. Includes repair of internal PVC drainage system withing the bridge structure
13.	Heat straightening and/or in-kind replacement of damaged steel beams	
14.	Installation of carbon-fiber reinforcements or post-tensioning design for the substructure/caps	Bridge strengthening technique
15.	Replacement of existing bridge fender structures by driving piles.	Involves cutting the existing fenders to 2' below the bud line for removal and installing new fenders in close proximity to the original location
16.	Epoxy injection repair of all concrete members (i.e. decks, beams, caps, columns, etc.)	
17.	Hydro-demolition of Concrete bridge decks	
18.	Replacement of edge beams	Concrete stiffening member placed transversely at the end of a span
19.	Installation of chain-link safety fencing	Addition of brackets and fence posts attached to the bridge with the fencing stretched atop the bridge railing
20.	Installation of temporary cable system staging for inspection activities	

Section B: Pavement Resurfacing/Shoulder Rehabilitation and Guardrail/Cable/Median Barriers on VTrans Federal Aid Projects

No.	Activity	Description
1.	Modernization of an existing transportation facility by widening equal to, or less than, a travel lane, not to exceed 12'	Includes but not limited to: <ul style="list-style-type: none"> • Shoulder additions • Bridge approaches • Turn lanes • Bicycle lanes
2.	Full-depth roadway reconstruction	Full-depth reconstruction to depth of existing subbase and within the existing road prism Full-depth reconstruction beyond existing subbase and withing existing ROW can qualify as Screened Activity following documented coordination with SHPO archaeologist
3.	Railroad ROW activities	Refer to Advisory Council on Historic Preservation's Program Comment to Exempt Consideration of Effects to Rail Properties within Rail Rights-of-Way
4.	Installation of ADA ramps to existing facilities	
5.	Reconstruction or repair of existing sidewalks, bicycle lanes, and multi-use paths including minor new connections to existing facilities	
6.	Correcting substandard roadway geometrics and intersections	Full-depth reconstruction to correct isolated deficiencies to depth of existing subbase and within the existing road prism Full-depth reconstruction to correct isolated deficiencies beyond existing subbase and withing existing ROW can qualify as Screened Activity following documented coordination with SHPO archaeologist.
7.	Ditching	Re-establishing existing and establishing new ditches within existing ROW.
8.	Repair or reconstruction of erosion control and protection measures	Includes but not limited to the following: <ul style="list-style-type: none"> • Slope stabilization • Slide repair • Rip-rap • Retaining walls • Streambank stabilization
9.	Ledge repair, removal, and stabilization	

10.	Routine cleaning, maintenance, and repair of existing drainage, stormwater management, and water quality facilities and devices	
11.	Shoulder/median work	Includes the following activities: <ul style="list-style-type: none"> • Shoulder building through the addition of pavement to existing shoulder, within the existing toe-of-slope • Typically associated with resurfacing of turn lanes, bike lanes, medians, etc. • May also include repair of roadway edge line
12.	Guardrail installations	Installation of new guardrail and guardrail anchors withing existing disturbed ROW
13	Median crossovers	Includes the following activities: <ul style="list-style-type: none"> • Installation of, or upgrade to, median crossovers on divided highways, to include the addition of turn lanes • Includes grading and/or fill withing median and addition of paved surface and associated striping
14.	Cable barriers	Includes the following activities: <ul style="list-style-type: none"> • Installation of new, or rehabilitation of existing, cable barriers withing existing toe-of-slope • Includes concrete foundation, breakaway post, and cable

Section C: Miscellaneous – including but not limited to park & rides, rest areas, ADA, utilities/signage/traffic signals on VTrans Federal Aid projects

No.	Activity	Description
1.	In-kind replacement/relocation of existing utility poles and underground utilities	Utility markers cannot be within 20-feet of significant element or access to a historic property
2.	Signage	Routine maintenance consisting of replacement of signs allowing for current safety standards
3.	Installation of dynamic message signs	Includes the following activities: <ul style="list-style-type: none"> • Installation of concrete footer to support sign pole or truss structure • Installation of pull-boxes, cabinets, and conduit
4.	New advance warning signs	Installation of flashing lights at approach to an intersection
5.	Directional underground boring	

6.	Installation of Intelligent Transportation Systems (ITS) equipment to existing poles	Addition of ITS components (cameras, wireless devices, signs, cabinets, etc.) to an existing pole <ul style="list-style-type: none"> • Connected to existing pull-box and conduit
7.	Upgrade existing traffic signals and city signal systems	Involves installation or replacement of traffic signals, poles, and/or signal cabinets
8	Installation of new traffic signals	
9.	Stormwater retrofits	Construction of stormwater treatment features into existing roadways and facilities
10.	Installation of ADA curb-cuts on existing sidewalks	
11.	Airports (FHWA funded airport activities only)	General repair or maintenance of existing airport facilities
12.	Installation and replacement of pedestrian poles and pedestrian signals	Involves the installation or replacement of signal heads and/or push-button stations
13.	Landscaping	Includes the following activities: <ul style="list-style-type: none"> • Shallow grading, tilling, and planting. Grading and tilling, if needed are used to smooth surface and/or bring in soil prior to planting • Mowing • Seeding
14	Right-of-way reclamation	Includes the following activities: <ul style="list-style-type: none"> • Removal of vegetation which has grown since original construction or reconstruction. Consists of cutting back existing vegetation within the clear zone • May include chemical treatment and/or grinding of stumps to prevent regrowth
15.	Replacement of existing lighting	Replacement of existing lighting within the right-of way or at underpasses
16.	Replacement of existing fencing	Replacement of existing fencing within the ROW
17.	Ramp and intersection improvements	Consists of in-place replacement or upgrading of existing ramps and the addition of ramp turn lanes
18.	Miscellaneous utilities	Replacement/repairing of existing underground utilities in-kind and withing existing roadway footprint Replacement and relocation of existing utility poles between edge of sidewalk and road

19.	Enhancements, park & rides, rest areas, etc.	Maintenance and minor improvements to existing park & rides withing existing boundaries and where excavation will occur
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APPENDIX C
(Page 1 of 3)
LIST OF EXCEPTIONAL CULVERTS and BRIDGES

VTrans shall complete a full Section 106 review of a project on the state highway system that has the potential to affect any of the exceptional culverts and bridges listed below. This includes only state-owned culverts and bridges.

VTrans shall first make any historic culvert or bridge it proposes to demolish available for donation or sale to state, local, or responsible private entity in compliance with 23 U.S.C. 144(g.). However, the only concrete culvert or bridges subject to donation or sale are those identified in Appendix C. For Appendix C bridges, VTrans will determine if the bridge is a reasonable candidate for relocation or remaining in place.

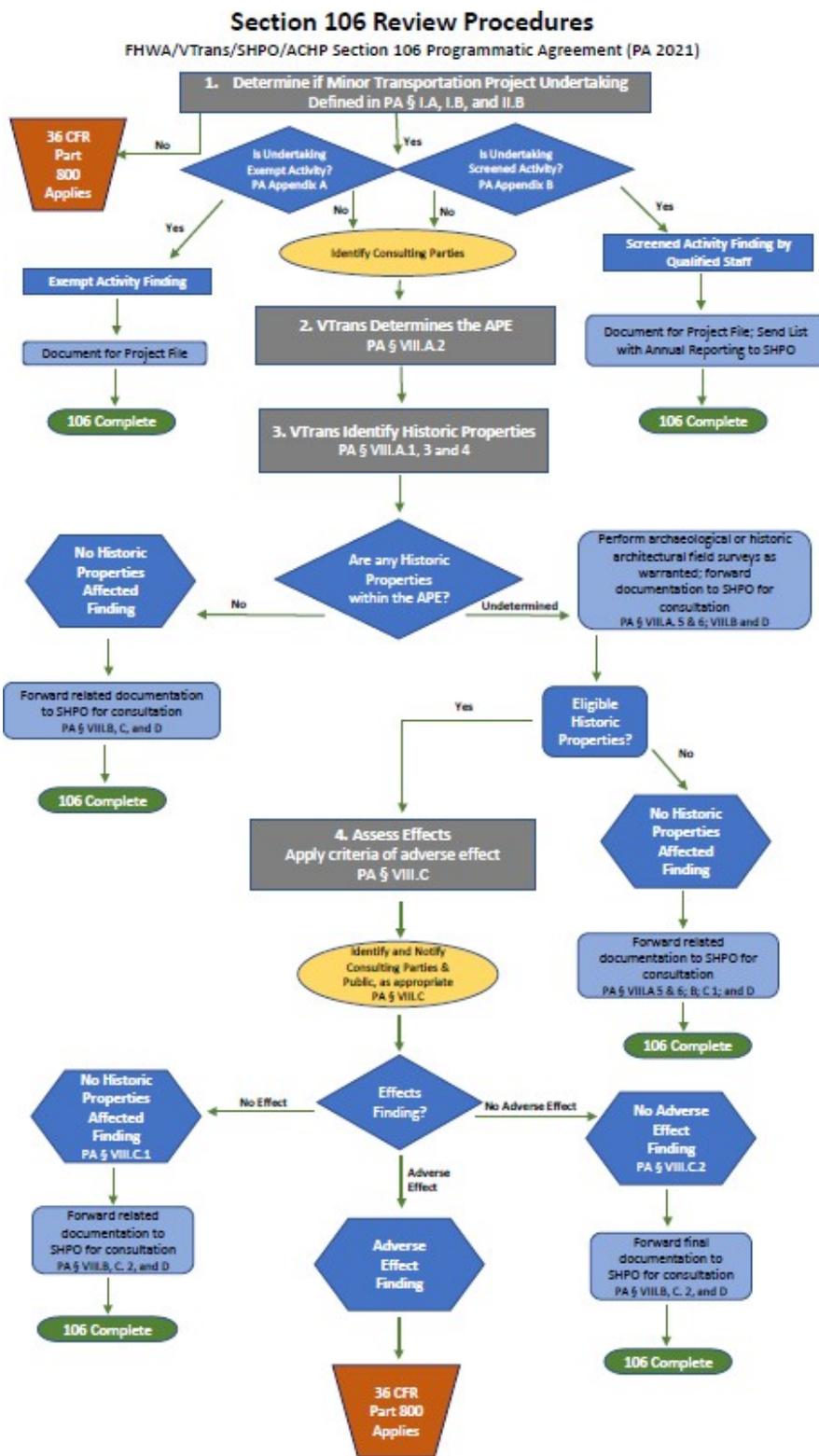
Route Name	Bridge Number	Year Built	Year Re-constructed	Town Name	Bridge Type	Bridge Type Code	NRHP Criteria	Notes	Location
VT2B	5	1919	—	St. Johnsbury	Concrete Frame	107	A or C	Earliest concrete rigid frame with moderate integrity.	2.3 MI E JCT US2
VT104	17	1927	—	St. Albans	Concrete Rigid Frame	107	A or C		1.2 MI S JCT VT 36
VT14	52	1931	—	Williamstown	Concrete Rigid Frame	107	A or C	Very poor condition but good example	4.1 MI N VT65
US5	124	1931	1970	Barnet	Concrete Arch	111	A or C		5.0 MI S JCT US 2
VT11	063A	1949	—	Springfield	Concrete Arch	111	A or C		JCT VT 143
VT09	53	1914	—	Brattleboro	Concrete Arch Wd with Slab	119	A or C	Not Exempt, Nice example of an early concrete culvert with concrete rail.	1.1 MI W I91
VT15	39	1917	—	Hyde Park	R.C. Box	119	A	Earliest box culvert with railing but in very poor condition	1.7 MI W VT 100 N
VT15	76	1918	1937	Walden	R.C. Box	119	A	Potential rehabbed but early example	2.2 MI E JCT VT 16
US5	43	1919	—	Springfield	R.C. Box	119	A		1.0 MI S JCT VT 11 WEST
US5	45	1919	—	Springfield	R.C. Box	119	A		0.1 MI N JCT VT 11 EAST
US5	126	1919	—	St. Johnsbury	R.C. Box	119	A		1.6 MI S JCT US 2
VT4A	10	1919	—	Castleton	R.C. Box	119	A		3.4 MI E VT 30
VT4A	9	1919	—	Castleton	R.C. Box	119	A		3.2 MI E VT 30
VT7A	28	1919	—	Manchester	R.C. Box	119	A		0.5 MI S JCT VT 11
VT112	4	1919	—	Halifax	R.C. Box	119	A		4.8 MI E JCT VT 100
VT142	1	1919	—	Vernon	R.C. Box	119	A		0.6 MI N VT MASS ST LINE
VT128	7	1919	—	Westford	Concrete Box	119	A		2.1 MI S JCT VT 104
VT128	4	1919	—	Essex	Concrete Box	119	A		2.1 MI N JCT VT 15
VT128	2	1919	—	Essex	R.C. Box	119	A		0.8 MI N JCT VT 15
VT112	6	1919	1940	Halifax	R.C. Box	119	A		3.2 MI E JCT VT 100
VT11	16	1919	—	Winhall	R.C. Box	119	A		0.5 MI E JCT VT 30
VT112	2	1919	—	Halifax	R.C. Box	119	A		6.2 MI E JCT VT 100
VT108	4	1919	1953	Stowe	R.C. Box Wid with Slab	119	A		4.0 MI N JCT VT 100
VT14	125A	1919	—	Irasburg	R.C. Pipe	119	A		0.7 MI N JCT VT 58 W
VT15	77	1919	1938	Walden	R.C. Box	119	A		2.3 MI E JCT VT 16
VT15	2	1919	—	Essex	R.C. Box	119	A	Good intact example	1.4 MI E VT 2A
VT14	125B	1919	—	Irasburg	R.C. Pipe	119	A		1.2 MI N JCT VT 58 W
VT346	5	1919	1933	Pownal	R.C. Box	119	A		2.0 MI N JCT US 7
VT100	74	1919	—	Wardsboro	R.C. Box	119	A		4.0 MI S JCT VT 30
VT125	013A	1919	—	Ripton	Precast R.C. Box	119	A		3.4 MI. E US7
US302	004A	1919	—	Barre City	Conc Slab/Gran Slab	119	A		3.5 M EAST JCT US2
VT11	21	1919	—	Peru	R.C. Box	119	A		4.6 MI E JCT VT 30
VT14	62	1921	—	Williamstown	R.C. / Stone Box	119	A		3.9 MI S JCT US 302 S

APPENDIX C (Page 2 of 3)
LIST OF EXCEPTIONAL CULVERTS AND BRIDGES (continued)

APPENDIX C (Page 3 of 3)
LIST OF EXCEPTIONAL CULVERTS AND BRIDGES (continued)

Route Name	Bridge Number	Year Built	Year Re-constructed	Town Name	Bridge Type	Bridge Type Code	NRHP Criteria	Notes	Location
US302	5	1918	1975	Barre City	Jack Arch	302	A	Not Exempt, Series of corrugated pipe arches between steel beams, stone abutments	0.1 MI W JCT VT 14
US2	84	1923	___	Cabot	Timber Penstock	719	A		7.6 MI W JCT VT 15
US5	169	1931	___	Barton	Granite Slab/ R.C. Box	800	A or C		3.2 MI N JCT VT 16 WEST
US5	162	1905	___	Barton	2 Span Masonry Slab	801	A or C		0.4 MI S JCT VT 16 SOUTH
US2	123	1917	___	Lunenburg	Stone Arch	811	A or C		5.7 MI W JCT VT 102
VT09	5	1919	___	Bennington	Masonry Stone Arch	819	A or C		0.2 MI W US 7
US4	57	1932	___	Hartland	Masonry Arch Culvert	819	A or C		0.1 MI E JCT VT 12 SOUTH

APPENDIX D SECTION 106 FLOWCHART



ATTACHMENT 1: Tribal Consultation Protocol Matrix

FHWA VT DIV Tribal Consultation Protocol Matrix						
Tribe	Area of Interest	Contact Information	Email	Phone	Address	Remarks
Stockbridge-Munsee Mohican Tribe	South West portion of VT (See Map)	Nathan Allison (THPO)	Nathan.Allison@mohican-nsn.gov	518-244-3164	Stockbridge-Munsee Mohican Tribal Historic Preservation 65 First Street Troy, NY 12180 New York Office	Based on April 2021 letter federal agencies must email all 106 PA documents to thpo@mohican-nsn.gov, if no comment within 30 days then they do not have comments. (No comments submitted)
Wampanoag Tribe of Gay Head	Not Designated so Statewide	Bettina Washington Tribal Historic Preservation Officer	bettina@wampanoagtribe.net ; thpo@wampanoagtribe-nsn.gov ; tcrm2@wampanoagtribe-nsn.gov	508-560-9014	Wampanoag Tribe of Gay Head 20 Black Brook Road Aquinnah, MA 02535	Based on July 7, 2021 phone conversation the Wampanoag Tribe of Gay Head has no comments to this PA.
Penobscot Nation	Statewide	Chris Sockalexis (THPO)	Chris.Sockalexis@penobscotnation.org	207-817-7471	Penobscot Nation 12 Wabanaki Way Indian Island, ME 04468	No response to 106 PA request for comments to protocol so indeterminant due to no contact.
Mashantucket Pequot Tribe	Statewide	Michael Johnson (THPO)	MEJohnson@mptn-nsn.gov	860-396-7570	Mashantucket Pequot Tribe 550 Trolley Line Blvd, P.O. Box 3202 Mashantucket, CT 06338-3202	No response to 106 PA request for comments to protocol so indeterminant due to no contact.
Narragansett Indian Tribe	Not Designated so Statewide	John Brown (THPO)	John Brown tashtesook@aol.com	401-585-0142	NITHPO 4425 South Country Trail, Charlestown Rhode Island 02813 or Narragansett Indian Tribal Historic Preservation Officer 13 George Steet, APT 2, Westerly Rhode Island 02891	No response to 106 PA request for comments to protocol so indeterminant due to no contact.
Cayuga Nation	Not Designated so Statewide	Clint Halftown (Nation Representative)	sharon.jeroy@cavuganation-nsn.gov	315-568-0750	Cayuga Nation of Indians P.O. Box 803 Seneca Falls, NY 13148 Fed Ex Address 66 Genesee St Auburn, NY 13021	No response to 106 PA request for comments to protocol so indeterminant due to no contact. + No responses to any attempts in communication over the last 3+ years.
Passamaquoddy Tribe - Pleasant Point	Not Designated so Statewide	Chief Marla Dana POC : Ernest Neptune	ernestneptune@gmail.com ; maggiedana@wabanaki.com	207-853-2600 ernest extension 215	Tribal Office Building 9 Sakom Road, Perry, ME, 04667	No response to 106 PA request for comments to protocol so indeterminant due to no contact. + No responses to any attempts in communication over the last 3+ years.
Passamaquoddy Tribe - Indian Township	Not Designated so Statewide	POC: Vice Chief Darrell Newell	chief.wnicholas@gmail.com ; ltgovdnewell@gmail.com Maybe soctomah@gmail.com	207-796-2301 (Does not work) Maybe 207-214-4051	Tribal Office 8 Kennebsis, Princeton, ME, 04668 or PO Box 159 Princeton, ME 04668	No response to 106 PA request for comments to protocol so indeterminant due to no contact. + No responses to any attempts in communication over the last 3+ years.

APPENDIX B

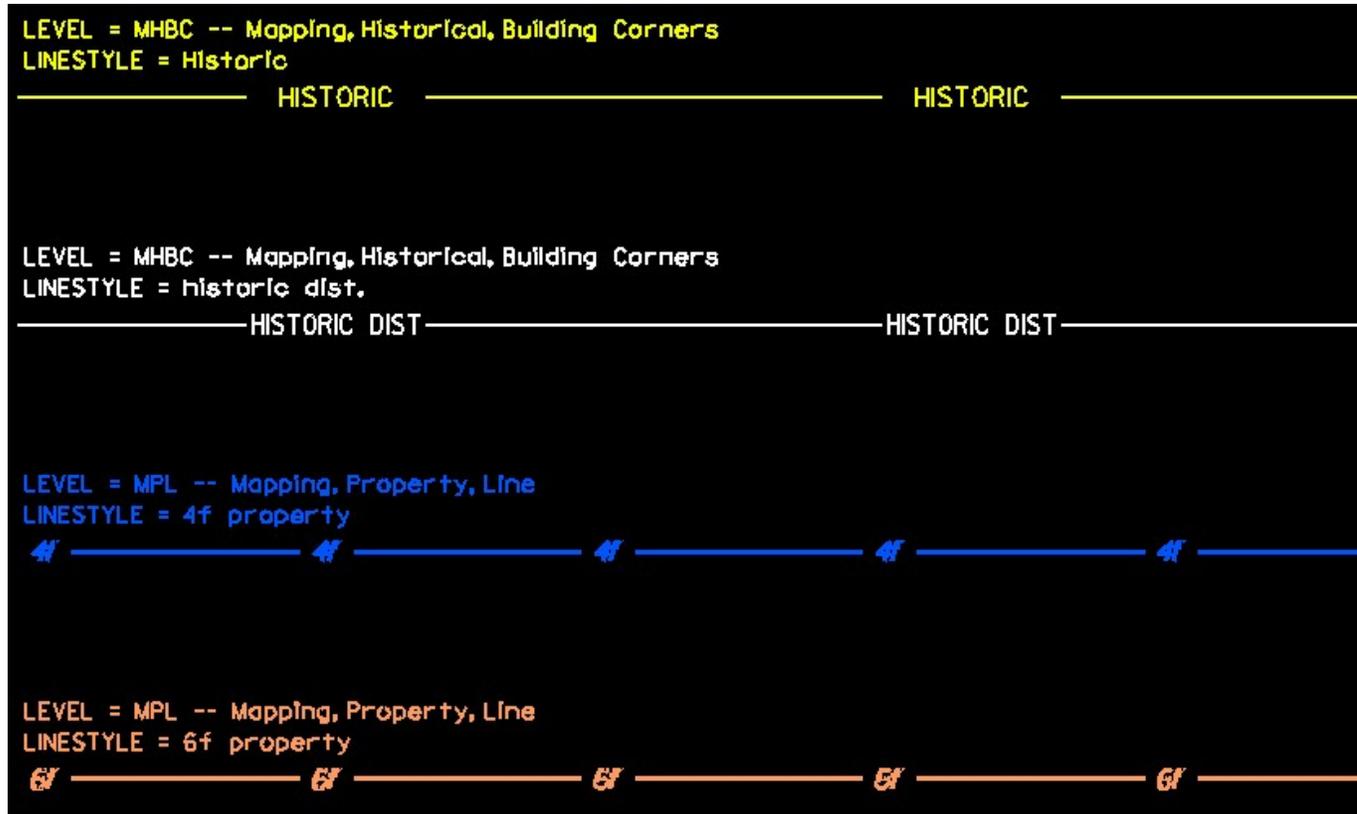
RESOURCE ID STANDARD OPERATING PROCEDURES

Resource ID Standard Operating Procedures for Consultants

1. Consultants should send both shapefiles and dgn of resources identified.
2. VTrans CADD Guidance link
 - a. <https://vtrans.vermont.gov/cadd>
 - b. Standards and Procedure Manual (see link below)
3. Using the Legend Sheet below, they can reference in and then use for all the line styles and levels.
 - a. For those who can see the T: it is at T:\CADD\WorkSpace\Projects\English\dgn\forms\LegendSheet.Dgn

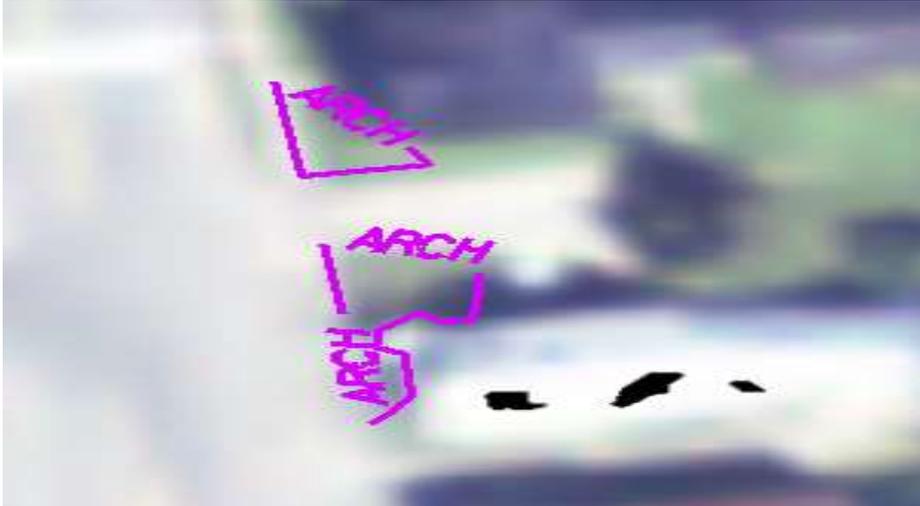


- b. Below are some recommendations from the VTrans Design Section.
 - a. VTrans CADD Standards and Procedure Manual (https://outside.vermont.gov/agency/vtrans/external/CADD/WebFiles/Downloads/Standards/VAOT_cspm_2014.pdf), specific attention to section 6 (pages 27 (PDF #33) to 37 (PDF #43)) and Appendix D (PDF pages 103 to 109), and the Plan Set Symbology Legend (Found on the CADD Help, Details & Examples webpage: <https://vtrans.vermont.gov/cadd/downloads/details>). Environmental Permit Symbology Legend, open LegendSheetEnv.dgn.
5. Other
 - a. Be sure you are using Vermont State Plane Grid (Linear Units = U.S. Survey Foot).
 - b. Be sure you are using VTrans standard line styles for Arch, Historic, 4(f), wetlands, etc. See example below.



- i.
- ii. All environmental symbols and line styles can be found here:
 1. Environmental Permit Symbology Legend, open LegendSheetEnv.dgn. <https://vtrans.vermont.gov/cadd/downloads/details> (mentioned in #4 above)
 2. All text should match levels if additional text is required.
- c. Historic and 4(f)
 - i. Historic Buildings have the (H) symbol in/on them in the drawing. Each building with an (H) is a specific historic building, no need to also outline the building.

- ii. If the property is historic, put the –Historic– line around the property’s parcel boundary line. This is specific to individual properties that are not related to historic districts, see below.
- iii. Historic Districts will be outlined or at least have some limit lines even if not a closed shape.
 - 1. Contributing historic properties within the district will be noted with the historic (H) symbol and non-contributing properties will have no symbology. Do not outline contributing parcels within the district with the historic line as this will result in too many lines (this also applies to parcels within a historic district that may be considered individually eligible as well as being contributing).
- iv. Non-historic properties do not have symbology. Do not add property lines or point features as these are shown in other ways through the VTrans survey drawings and ROW parcel lines.
- v. Use the 4(f) line style for all 4(f) property types other than historic. Historic properties are identified only by the historic line style and are understood to also be 4(f) properties.
- d. Archaeology:
 - i. Archaeologically sensitive areas will be identified with the –ARCH- line style surrounding the area of sensitivity.
 - ii. If the area is a large field, then one may not need to close the shape but the line should extend along the sensitive limits on the roadway side and face INTO the arch sensitive area.
 - 1. Example:



- iii.
- iv. -ARCH- lines are to be used to show both Pre-Contact (Native American) archaeological sensitivity as well as Historic archaeological sensitivity such as mill remains, structure remains, or other features that show above ground but are considered archaeological in nature.
- e. Be sure you are using VTrans Agency Seed File.
 - i. "T:\CADD\WorkSpace\Projects\English\seed\vtseed3d.dgn"
 - ii. <https://outside.vermont.gov/agency/vtrans/external/CADD/WebFiles/zip/workSpaceResources/VTrans2016March28setV8i.zip>
- f. Most likely conversions from Meters to U.S. Survey Feet should not be done. Simply create the DGN files in metric units then change the display units of the file. A conversion issue often happens when converting file formats because AutoCAD and MicroStation handle units differently and many application assume the AutoCAD method.
- g. Only include the specific resource graphics. Do not include ROW lines, property parcel lines, survey, etc.
 - i. Extra info will be duplicated by VTrans designers and will cause issues.
- 6. File naming convention
 - a. w"project PIN"rsc.dgn (if multiple dgn files, w"projectPIN""resource"_rsc.dgn)
 - i. Examples: w19V202rsc.dgn (w19V200archaeology_rsc.dgn and w19V200historic_rsc.dgn)

APPENDIX C

LANDOWNER GIFT AGREEMENT FORM

Vermont Archaeology Heritage Center

Deed of Gift

I/we own the property described in the Inventory of Objects (below or attached), and hereby unconditionally give, donate, bestow and set over unto the State of Vermont Archaeology Heritage Center, its successors and assigns, said property, to be used or disposed of in their unrestricted discretion. I waive all present or future rights in, to, or over said property, its use or disposition.

Signature: _____

Date: _____

Name: _____

Address: _____

Signature: _____

Date: _____

Name: _____

Address: _____

Inventory of Objects

Listed below as follows:

Listed on attached inventory

*Please review our Mission Statement and Deaccession Policy, which are available on our website or by request

Vermont Archaeology Heritage Center
60 Washington Street, Barre, VT 05641
ACCD.ArchaeologyCenter@state.vt.us

historicsites.vermont.gov/vt_history/archaeology

RFP Archaeological Consulting Services 2022

APPENDIX D

SAMPLE PROJECT

SAMPLE PROJECT: Ferrisburgh VTRY 20(1) Bridge Repair Project:

This project is located along the Vermont Railway line where it crosses Lewis Brook in Ferrisburgh, VT. The project consists of the repair of an existing deteriorating bridge. Portions of the deck will be replaced along with repairs to the existing north abutment and northwest wingwall where undermining has taken place. Vehicular access to the culvert is required as part of the project and access solely using the existing rail is not possible due to the type of equipment needed to repair the bridge.

The preferred proposed access road begins at Long Point Road in Ferrisburgh just west of the commercial business that is situated west of the tracks on the south side of Long Point Road. Access will begin just east of the existing utility line via an overgrown gravel entrance visible from Google Street View and head south utilizing a former dirt road that was used for the utility line project. This former road is visible using Google history view from 2008 but has grown back in since that time. The proposed road then crosses under the utility line behind the business and continues along the east side of the tracks between the existing utility line and the rail line.

In addition to the access road, a small staging area will also be needed in the northwest quadrant of the project area next to the tracks to store deck timbers. The contractor will need to upgrade the former road as part of this project. Small trees will need to be cut in places and the road must be wide enough to accommodate dump trucks, an excavator, and a crane. It is anticipated that the road max width will be 12 feet and will all be contained within the APE shown on the following pages.

Formal plans are not available for this project but VTrans has provided location maps showing the proposed access road and limits including the limits of the small staging area. The max area for staging is approximately 145 feet in length and 50 feet wide and remains within the outlined red APE.

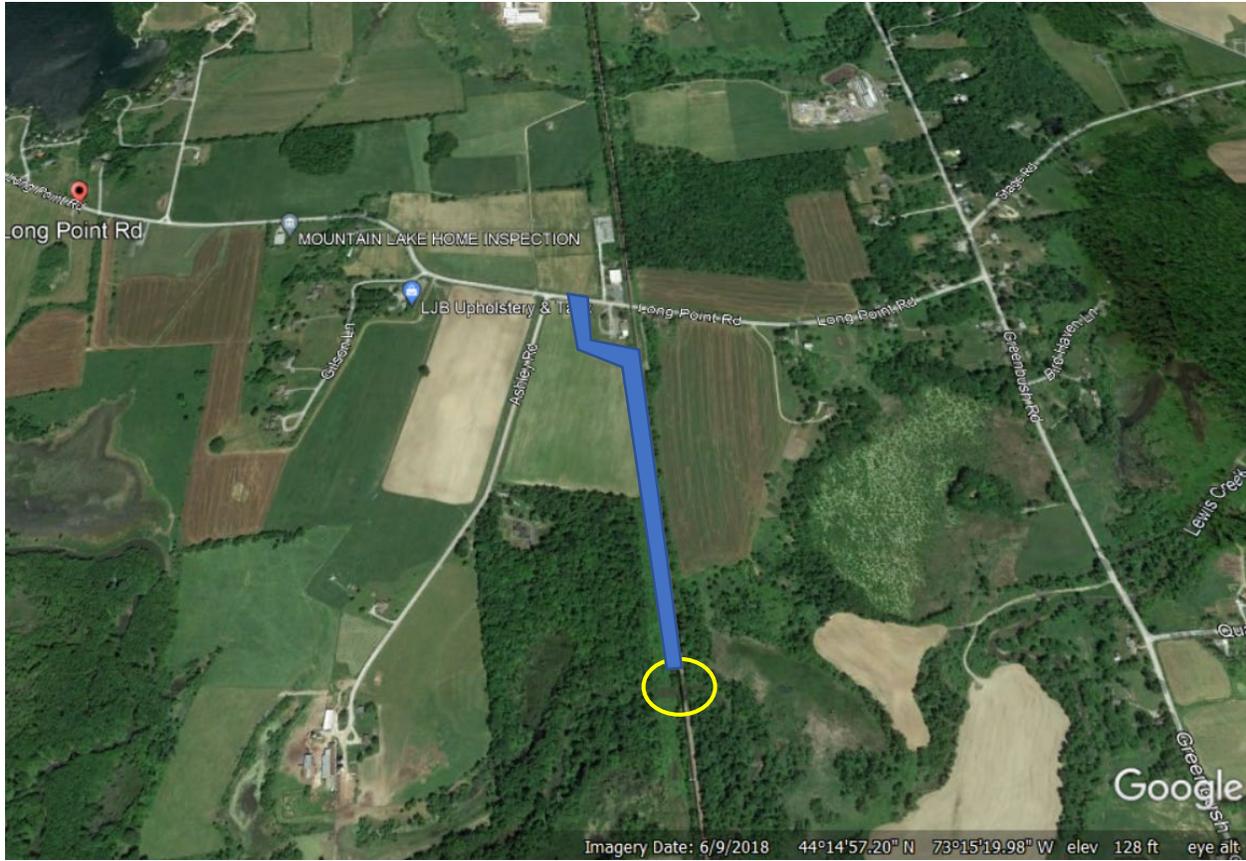
There are two known archaeological sites that were identified during utility line project back in the early 2000's around 2008. Those are listed in DHP's Online Resource Center (ORC) as VT-AD-1473 and 1472. Information on those two sites is readily available in the ORC.

The overall general area is highly archaeologically sensitive, and the consultant should prepare a phase 1 scope and cost for the upgraded temporary road and staging area and determine and illustrate where testing will take place based upon their assessment of the corridor and potential impacts. Please also include any recommendations for further study and/or proposed treatment measures for the two known sites that are located along the corridor and provide rationale for your recommendations.

VTrans is looking for proposals from the consultant that follow the VT Guidelines and consider thoughtful approaches to this project including any proposed further study or recommendations for ideas to minimize impacts to the known sites.

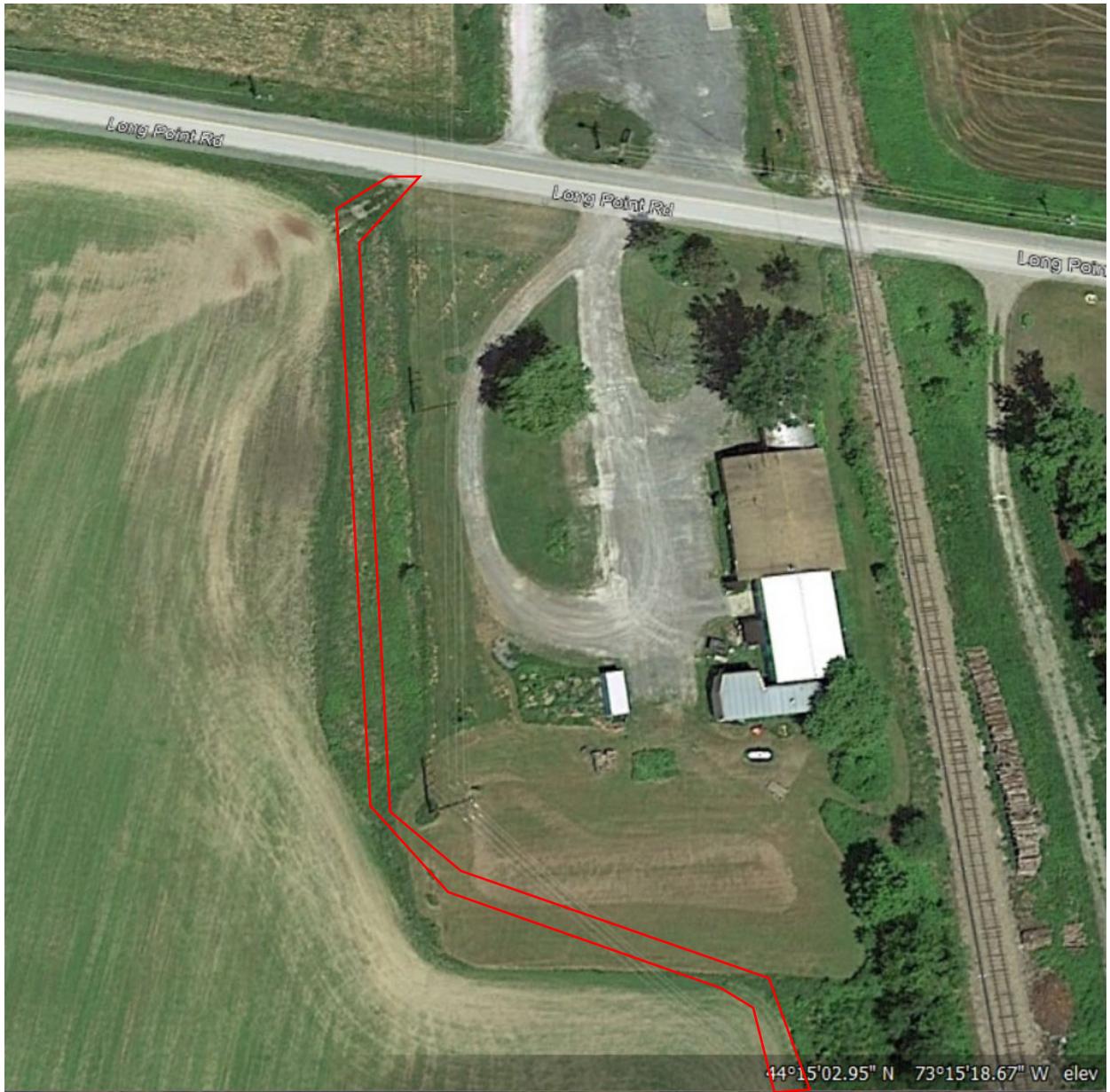
This sample project is based on a real scenario and one that could be presented to a consultant as part of a VTrans project.

Maps on following pages.



Google image showing project location and access

Project area circled in yellow. Blue line indicates general path for access.



APE outlined in red showing entrance and northern section of path.



APE for middle section of proposed road



APE in red indicates southern end of access road and staging area.



ORC image showing the 2 known sites



Google image from 2008 showing former access road for utility project

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of the contract. Award of a contract does not guarantee payment of any or all the maximum amount.

All Services shall be invoiced according to the payment provisions listed below:

HOURLY CLASSIFICATION RATES:

With hourly classification rate schedule assignments, meals will be reimbursed at actual cost up to the maximum State rates. Mileage will be reimbursed at State rates. Please be aware that in State mid-tour or mid-day meals are not eligible for reimbursement unless an overnight stay is required when away from home and official duty station.

Current State rates can be found here: <http://humanresources.vermont.gov/compensation/expense-reimbursement>

The hourly classification rates listed below will be in effect for the entire original term of the contract. The rates are subject to revision during the first optional one (1) year extension period and will be in effect for both optional one (1) year extensions.

Addition of classifications are permitted without an amendment. The new classifications and the rates associated must be submitted to the Contract Manager. The Contract Manager will then submit any approved additions to Contract Administration for inclusion into the contract. The Contract Manager may negotiate the classification rates prior to approval. Addition of the new classifications will be captured formally within the contract with the next amendment. This does not apply to rate changes; this is for any new classifications not previously included in the contract.

Subcontractor(s) labor, materials and other direct expenses shall be billed at cost. A copy of the invoice(s) verifying the charges must be attached to the billing sent to VTrans.

Work Authorization Process for Primary Contracts:

Work assignments will be awarded on a qualifications-based selection for services that are design and engineering in nature or on a best value based selection if not design and engineering in nature or if the funding is 100% State funds. This will be determined at the work order level depending on type of service and type of funding.

The bid that is the most qualified or provides the best value to VTrans may involve some negotiation regarding the classifications and estimated hours prior to award of the work assignment. If successful negotiations cannot be completed, VTrans reserves the right to move to the next most qualified or best value Contractor.

Qualifications will be based upon capacity, creative and technical solution, experience and past performance. Best value will take into consideration all of the items noted above for qualification-based selection. In addition, cost will be part of the consideration for best value selection.

The Work Authorization must accompany the invoice with all associated back-up to verify the charges.

All invoices that are related to a Work Authorization must be submitted electronically to aot.contractadministrators@vermont.gov

Invoice Preparation and Submittal:

Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, hours of work performed, rates of pay, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. **All invoices shall have a unique invoice number and follow a consistent numbering process. Invoices submitted without a unique invoice number will be returned.**

If additional information and guidance is provided as part of this contract, it is expected that invoices will be submitted according to those requirements.

Should any information within the invoice submittal be missing or incorrect, processing may be delayed until a corrected invoice is provided and accepted by VTrans. VTrans Audit may select invoices to review for completeness, accuracy and compliance with contract terms.

**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)



General Terms and Conditions for Contracts for Services

VERMONT AGENCY OF TRANSPORTATION

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The following terms and conditions are incorporated into the contract in addition to those contained in Attachment C, the Vermont Standard Provisions for Contracts and Grants, except where noted that the terms herein are substitutions for those contained in the Vermont Standard Provisions for Contracts and Grants.

A. INSURANCE

1. Basic Insurance Requirements for All Contracts for Services:

a. Prime Contractor:

For any work, a prime contractor must at minimum have and maintain throughout the life of the contract insurance coverage in types and amounts meeting or exceeding the State's standard insurance requirements specified in the State's Attachment C in effect at inception of the contract.

When a contract is amended, if a new Attachment C was adopted since the execution of the original contract, then the new Attachment C insurance requirements will apply as of and after amendment.

Certain types and settings of work require additional types and amounts of insurance coverage, beyond Attachment C requirements, as specified at Sections 2.e. and 3 below, which the Contractor must obtain and maintain throughout the life of the contract.

b. Subcontractors:

Subcontractors are required to have insurance coverage in types and amounts meeting or exceeding the prime contractor's insurance obligations to the State, including any additional types and amounts of insurance coverage for certain types and settings of work as specified at Sections 2.e and 3 below.

As to subcontractors, a prime contractor is obligated, for each of its subcontractors, to verify and maintain evidence of verification that each subcontractor carries all VTrans-required insurances. Subcontractors must do the same for their sub-subcontractors.

2. Workers Compensation Verification Compliance (*applies to both prime and subcontractors*):

a. In accordance with Act 54 of 2009,¹ and as subsequently amended, for total project costs over \$250,000, all contractors and subcontractors must have, when applicable:

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,

¹ See: Act 54 of 2009, § 32; Act 142 of 2010, § 17; Act 50 of 2011, § 6, as available at: <https://legislature.vermont.gov/>

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 job site, and the same information for the subcontractors regarding their subcontractors shall also be provided to the Department of Labor and to the [Department of Financial Regulation], upon request, and shall be available to the public.

- b. Contractors and subcontractors must preserve and retain the above discussed documentation seven (7) years, per section JJ of this document.
- c. VTrans has the right to audit contractors' and subcontractors' compliance with the above; however, contractors and subcontractors should be in good standing at all times with this monitoring obligation, regardless of whether or how often VTrans conducts such audits.
- d. VTrans reserves the right to require contractors and subcontractors to submit periodic attestations of compliance with these workers compensation verification requirements.
- e. Contract-specific risk and insurance:
 - i. Where the subject matter of the contract gives rise to specific insurance obligations under the Federal Motor Carrier Safety Act ("FMCSA") <https://www.fmcsa.dot.gov>, which applies to both certain transport of passengers and certain materials of environmental concern, contractors and subcontractors must comply with the FMCSA insurance requirements.
 - ii. Environmental and pollution insurance coverage may also be required when the State, in its sole discretion, determines it to be required under the scope and subject matter of a contract.
 - iii. VTrans reserves the right to require other additional types or amounts of insurance for specific contracts when, in VTrans' sole discretion, it is prudent to do so in relation to the details of a particular contract.

3. Additional Types and Amounts of Insurance for Certain Subjects and Settings of Contracts for Services:

One or more types and amounts of the insurance coverages specified below will apply when the subject or setting of work falls within the scope(s) specified and described below:

a. For Design/Engineering Professional Services for a Specific Contracts:

- i. Where Contractor's work under the contract provides in whole or part design/engineering professional services for one or more specific projects, then before commencing work and throughout the term of this contract, contractor must provide Professional Liability insurance for all relevant services performed

under this Agreement, with minimum coverage of no less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) policy aggregate.

- ii. The required Professional Liability insurance coverage must be maintained continuously for five (5) years after the final acceptance of any construction that may be developed as a result of such design work, even if the construction is performed under a separate contract or project.
- iii. Separate from task or project-specific requirements to maintain coverage, if contractor for any reason ceases operations, the contractor shall be responsible to obtain and maintain professional liability coverage that extends for not less than five (5) years after such cessation of operations.

4. Valuable Papers and Records Insurance:

Where contractor's work under the contract will in whole or part consist of providing the State with designs, plans, drawings, analyses, studies, reports, data, or other professional work product, contractor shall carry Valuable Papers and Records Insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other information or data relating to the work, whether supplied by the State or developed by the contractor, subcontractor, worker, or agent, in the event of loss, impairment, or destruction. Such coverage shall remain in force until the final work product as well as all related materials have been delivered by the contractor to, and accepted by, the State. Valuable Papers and Records Insurance shall provide coverage on an "individual occurrence" basis with limits in the amount of at least one hundred thousand dollars (\$100,000).

5. Railroad Protective Liability:

- a. When any portion of contractor's or a subcontractor's work under the contract involves 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 operations that it or its subcontractor perform under the contract, Railroad Protective Liability Insurance for and on behalf of the railroad as named insured, with the State and its officers and employees specified as additional insured.
- b. If Railroad Protective Liability insurance is required, the contractor shall obtain and submit the minimum coverage indicated above to the State prior to the commencement of rail-related work and activities, and shall maintain coverage until contractor notifies the State and the railroad that contractor has completed and ceased work on, over, or under the railroad right-of-way, and both State and railroad have concurred that contractor may terminate the railroad protective liability. Railroad coverage limits must meet or exceed:

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

The Contractor shall file the original and one (1) copy of the Railroad Protective Liability policy with the State, who will provide the original to the appropriate railroad.

6. Information Technology Contracts:

- a. For contracts determined by the State to fall within the category of “information technology activity” as defined in statute at 3 V.S.A. §3301(b)(2), additional types and amounts of insurance will typically be required, and may change over time, either as to general standards or with regard to the subject matter or potential risk exposure in a specific IT transaction.
- b. As of the issuance of these General Terms and Conditions, the required IT insurance types include: Technology Professional Liability insurance with third-party coverage, and, if contractor has access to, processes, handles, collects, transmits, stores, or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage, which shall include the State of Vermont and its officers and employees as additional insureds.
- c. Information technology contracts will also generally require their own set of additional specific terms and conditions, derived from the then-applicable templates issued by the Agency of Digital Services and the Office of Purchasing and Contracting within the Department of Buildings and General Services.

B. INDEMNIFICATION

1. Basic Indemnification Requirements (any contract for services):

a. Prime Contractor:

Except as specifically provided below, a prime contractor must act in an independent capacity and defend and indemnify the State in accordance with the State’s then-current Attachment C

b. Subcontractors:

Except as specifically provided below, the prime contractor must include requirements as to independence, defense, and indemnity, matching Attachment C and identical to those in the prime contractor’s contract with State, in the prime contractor’s contracts with subcontractors. Subcontractors must do the same for their sub-subcontractors.

2. For Design/Engineering Professional Services for a Specific Projects:

a. Prime Contractor:

Where a contract is for design/engineering professional services for a specific project, or, when a contract contains a mixed scope of work that in part consists of tasks of such professional design services for a specific project or projects, then as to, and only as to, those specific professional design services, the provisions of Standard Attachment C on the subjects of “Defense and Indemnity” (numbered item 7 in the December 2017 version of Attachment C, and any equivalent provisions, however numbered, in any subsequently-issued Attachment C) are stricken in their entirety and replaced in full by the following:

The Party shall defend the State and its officers and employees against all 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 providing “non-professional services” under this Agreement. As used herein, “non-professional services” means services provided under this Agreement other than professional services relating to the design and/or engineering of all or part of the project. The State shall notify the Party in the event of any such claim or suit covered by this Subsection, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit arising out of “non-professional services” provided under this Agreement.

Notwithstanding anything to the contrary set forth in Subsection C above, the Party shall not be obligated to defend the State and its officers and employees against claims or suits arising from the Party’s provision of engineering design services or architectural design services. However, the Party’s obligation to defend the State and its officers and employees against all claims or suits arising out of “non-professional services” provided under this Agreement as provided in Subsection C above and the Party’s other obligations under Attachment C shall remain in effect.

The Party agrees to indemnify and hold the State, its officers and employees, harmless from and against monetary damages to third parties, together with reasonable costs, expenses and attorney’s fees incurred and paid by the State in defending claims by third parties (collectively “Damages”) but only in the event and to the extent such Damages are incurred and paid by the State as the proximate cause of negligent acts, errors or omissions (“Professional Negligence”) by the Party, its employees, agents, consultants and subcontractors, in providing the professional services required under this Agreement.

As used herein, “Professional Negligence” or “negligent acts, errors or omissions” means a failure by the Party to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or similar conditions and circumstances.

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 arising from the provision of “non-professional services” (as defined herein) under this Agreement.

The Party shall not be obligated to indemnify the State for any Damages incurred by the State attributable to the State’s own negligent acts, errors or omissions or the negligent acts, errors or omissions of its officers, agents or employees, or the acts, errors, omissions or breach of Agreement by persons or entities other than the Party, its employees, agents, consultants and subcontractors.

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.

b. Subcontractors:

As to subcontractors working under a prime contractor and where the subcontractors are providing such professional design services for a specific project, the prime contractor will include the same design-specific provisions as defined in Section B(2)(a) above in the prime contractor’s own contracts with subcontractors. Subcontractors must do the same for their sub-subcontractors.

C. GENERAL COMPLIANCE WITH LAWS; RESPONSIBILITY FOR VIOLATION

1. The contractor shall observe and comply with all applicable federal, state, and municipal laws, bylaws, ordinances, and regulations in any manner affecting the conduct of the work and the action or operation of those engaged in the work, including all such orders or decrees as exist at present and those which may be enacted, adopted, or issued later, during the course of the work, by bodies or tribunals having any jurisdiction or authority over the work; and the contractor shall defend, indemnify and save harmless the State, any affected railroad(s), and any affected municipality(ies), and all their officers, agents, and employees against any claim or liability arising from or based on the violation of any such law, bylaws ordinances, regulations, order, or decree, whether by the contractor in person, its employee(s), or by the contractor’s subcontractor(s) or agent(s), or employee(s) or agents thereof.
2. If the contractor discovers any provision(s) in the contract contrary to or inconsistent with any law, ordinance, regulation, order, or decree, the contractor shall immediately report it to the Project Manager in writing.

D. COMPLIANCE WITH DESIGN SPECIFICATIONS, STANDARDS, MANUALS, GUIDELINES, DIRECTIVES, AND POLICIES

The contractor shall comply with all applicable statutes, regulations, ordinances, specifications, manuals, standards, guidelines, policies, directives, and any other requirements related to the

contract. In case of any conflict with the items referenced above, the contractor is responsible to ascertain and follow the direction provided by the State.

E. SEVERABILITY

Provisions of the contract shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both parties. If for any reason a provision in the contract is unenforceable or invalid, VTrans, in its sole discretion may sever that provision from the contract, and the remaining provisions shall have the same force and effect as if the severed provisions had never been a part of the contract.

F. PROMPT PAYMENT

1. The contractor, by accepting and signing the contract, agrees to fully comply with the provisions of 9 V.S.A. §§ 4001-4009, also referred to as Act No. 74 of 1991 or the Prompt Payment Act, as amended. Compliance with this clause also satisfied the requirements of 46 CFR § 26.29. applicable to Federally funded contracts.
2. In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary contract provision, payments shall be made within seven days from receipt of a corresponding final or progress payment by the State to the contractor, or seven days after receipt of a subcontractor's invoice, whichever is later. Failure to comply constitutes violation of this contract.
3. On all federal-aid and state funded contracts, the contractor, during the life of the contract and on a monthly basis, shall submit electronically a listing of payments to subcontractors on the form specified by the State and made available at: <http://apps.vtrans.vermont.gov/consultants/>. Electronic reports shall be filed with VTrans Office of Civil Rights by an authorized representative and received in the VTrans Office of Civil Rights on or before the tenth working day after month end. Contractors without access to the internet shall obtain and submit manual reports to the VTrans Office of Civil Rights. Manual reports shall be signed by an authorized representative, sent to the VTrans Office of Civil Rights, and postmarked on or before the tenth working day after month end. There shall be no direct compensation allowed the contractor for this work, but the cost thereof shall be included in the general cost of the work.
4. Violations shall be reported to the VTrans Office of Civil Rights for review. Failure to resolve disputes in a timely manner will result in a complaint made to the VTrans Chief of Contract Administration. In the Agency's judgment, appropriate penalties may be invoked for failure to comply with this specification. Penalties may include debarment or suspension of the ability to submit proposals.
5. This section shall be included in the prime contractor's contract made with all of its subcontractors.

G. TERMINATION

In addition to the Termination provisions contained in Attachment C, the following terms are included in this contract:

Termination for Convenience

1. General

- a. The Agency may, with thirty (30) days written notice to the Contractor, terminate the Contract or any portion thereof when such termination would be in the best interest of the Agency. Upon notification, the contractor may be directed to immediately stop all work and incur no further costs under the contract.
- b. Any such termination shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
- c. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
- d. No compensation will be allowed for incomplete or eliminated contract items.
- e. Termination of the Contract, or portions thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.

2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by VTrans, the Contractor shall immediately proceed to:

- a. The extent specified in the Notice of Termination, cease work under the Contract on the date specified.
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the Contract that are not terminated.
- c. Terminate and cancel any orders or subcontracts related to the services, except as may be necessary for completion of such portions of the work under the Contract that are not terminated.

- d. Transfer to VTrans all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to VTrans.
- e. Take other actions as may be necessary or as directed by VTrans for the protection and preservation of the property related to the contract which is in the possession of the contractor and that VTrans has or may acquire any interest.
- f. Make available to VTrans all cost and other records relevant to a determination of an equitable settlement.

3. Claim by Contractor

After receipt of the Notice of Termination from VTrans, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within sixty (60) days of the effective termination date. Should the Contractor fail to submit a claim within the sixty (60) day period, VTrans may, at its sole discretion, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

4. Negotiation

Negotiations to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and VTrans. Settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.

H. PROPRIETARY RIGHTS

1. If a patentable discovery or invention results from work performed under the contract, all rights to such discovery or invention shall be the sole property of the Contractor, but the State and the United States Government shall have an irrevocable, nonexclusive, non-transferable, and royalty free license to each invention in the manufacture, use, and disposition, according to law, of any article or material or use of method that may be developed, as a part of the work under the contract.
2. Publications: All data, valuable papers, photographs, and any other documents produced under the terms of the contract shall become the property of the State of Vermont. The Contractor agrees to allow access to all data, valuable papers, photographs, and other documents at all times. The contractor shall not copyright any material originating under the contract without prior written approval of the State.
3. Ownership of the Work: All studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, photographs, and other material prepared or collected by the contractors ("instruments of professional

service") shall become the property of the State as they are prepared or developed during performance of the work under the contract. If a contractor uses a proprietary system or method to perform the work, only the product will become the property of the State. The Contractor shall not be liable for any reuse, misuse, or alteration of these "instruments of professional service" by the State.

4. The Contractor shall surrender to the State upon demand or submit for inspection at any time any instruments of professional service that have been collected, undertaken, or completed by the Contractor pursuant to the contract. Upon completion of the work, these instruments of professional service will be appropriately endorsed by the Contractor and turned over to the State.
5. Data and publication rights to any instruments of professional services produced under the contract are reserved to the State and shall not be copyrighted by the contractor at any time without written approval of the State. No publication or publicity of the work, in part or in total, shall be made without the consent of the State, except that contractors may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.
6. Rights and Remedies Additional: The rights and remedies of the State under this section are in addition to any other rights and remedies that the State may possess by law or under this contract.
7. Decisions Final and Binding: Decisions of the State on matters discussed in this section shall be final and binding.

I. PERSONAL CONFLICTS OF INTEREST

Contractor employees performing services for the VTrans shall not have, directly or indirectly, a personal conflict of interest with respect to any contract with VTrans and must immediately disclose to VTrans any personal conflicts of interest arising at any time from the bidding process to final contract close-out.

Definitions

As used in this clause:

1. Contractor Employees means employees and subcontractors of a VTrans contractor.
2. Personal Conflict of Interest means a situation in which a contractor employee has a financial interest, personal activity, or relationship that could impair the individual's ability to act impartially and in the best interest of the Government when performing under the contract.
 - a. Sources of personal conflicts of interest include but are not limited to:

- i. Financial interests of the contractor employee, of close family members, or of other members of the contractor employee's household;
 - ii. Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
 - iii. Gifts, including travel.
- b. Examples. Financial interests referred to above may arise from:
 - i. Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
 - ii. Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
 - iii. Services provided in exchange for honorariums or travel expense reimbursements;
 - iv. Research funding or other forms of research support;
 - v. Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
 - vi. Real estate investments;
 - vii. Patents, copyrights, and other intellectual property interests; or
 - viii. Business ownership and investment interests.
3. Acquisition Function means supporting or providing advice or recommendations to the following activities of a State agency:
 - a. Planning acquisitions;
 - b. Determining what supplies or services are to be acquired by the Government, including developing statements of work;
 - c. Developing or approving any contractual documents, including documents defining requirements, incentive plans, and evaluation criteria;
 - d. Evaluating contract proposals;
 - e. Awarding Government contracts;

- f. Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services);
 - g. Terminating contracts; and
 - h. Determining whether contract costs are reasonable, allocable, and allowable.
4. Non-public information means any State or third-party information that:
- a. Is deemed by VTrans to be proprietary or confidential, or is exempt from disclosure under the Vermont Public Records Act, 1 V.S.A. § 315, et al, or otherwise protected from disclosure by statute, Executive order, or regulation; or
 - b. Has not been disseminated to the general public and the State has not yet determined whether the information can or will be made available to the public.

Requirements

The Contractor shall:

1. Have procedures in place to screen employees for potential personal conflicts of interest;
2. Prevent personal conflicts of interest, including not assigning or allowing an employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency; and
3. Prohibit use of non-public information accessed through performance of a Government contract for personal gain.
4. Inform employees of their obligation:
 - a. To disclose and prevent personal conflicts of interest;
 - b. Not to use non-public information accessed through performance of a Government contract for personal gain;
 - c. To avoid even the appearance of personal conflicts of interest;
5. Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;
6. Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause;

7. Report to VTrans any personal conflict-of-interest violation by an employee as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation.
8. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include:
 - a. Failure by an employee to disclose a personal conflict of interest;
 - b. Use by an employee of non-public information accessed through performance of a Government contract for personal gain; and
 - c. Failure of an employee to comply with the terms of a non-disclosure agreement.
9. In the case of contractors' employees *who perform acquisition functions* for VTrans, screening procedures must include:
 - a. Maintaining and obtaining from each employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:
 - i. Financial interests of the employee, of close family members, or of other members of the covered employee's household;
 - ii. Other employment or financial relationships of the employee (including seeking or negotiating for prospective employment or business); and
 - iii. Gifts, including travel.
 - b. Requiring each employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the employee is performing.

Mitigation or Waiver

1. In exceptional circumstances, if the Contractor cannot satisfactorily prevent a personal conflict of interest as required above, the Contractor may submit a request through the applicable Division Director for:
 - a. An agreement to a plan to mitigate the personal conflict of interest; or
 - b. A waiver of the requirement.
2. The Contractor shall include in the request any proposed mitigation of the personal conflict of interest.

3. The Contractor shall:

- a. Comply, and require compliance by the employee, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or
- b. Remove the Contractor employee or subcontractor employee from performance of the contract or terminate the applicable subcontract.

Disclosure

A mandatory duty is established for the Contractor to disclose procurement fraud, and overpayments, or risk debarment or suspension. The contractor must report fraud, conflicts of interest, bribery, and illegal gratuities in connection with the award or performance of a state contract.

Code of Business Ethics

Contractors are encouraged to have a written code of business ethics and conduct. In addition, the contractor should have an ongoing ethics and compliance training program for principals and employees, as well as a system of internal controls to detect fraud and improper conduct.

J. ORGANIZATIONAL CONFLICTS OF INTEREST (OCOI)

Definition

Organizational conflict of interest (“OCOI”) means that because of other activities or relationships with other persons or entities, a contractor *as a business entity*:

1. Is unable or potentially unable to render impartial assistance or advice to VTrans;
2. Is or may be impaired in its objectivity in performing the contract work (Example: A firm has a contract to inspect work by firms that are its business affiliates); or
3. Has an unfair competitive advantage. (Example: a firm participates in systems engineering and technical direction; preparing specifications or work statements; participates in development and design work; or gains access to the information of other companies in performing advisory and assistance services for the government drafting a scope of work for a project, then bids on the project itself.)

Disclosure

The Contractor shall make an immediate and full disclosure, in writing, to the VTrans Project Manager of any potential or actual OCOI or the existence of any facts that may cause a reasonably prudent person to question the contractor's impartiality because of the appearance or existence of bias or an unfair competitive advantage. Such disclosure shall include a description of the actions

the contractor has taken or proposes to take in order to avoid, neutralize, or mitigate any resulting conflict of interest.

Contractors in Management Support Roles

OCOIs often arise when contractors or subcontractors are employed in management support roles, such as oversight and inspection of the work of other contractors, and the development of designs, requirements, or statements of work or procurement documents such as requests for proposal. Such contracts bear particularly close monitoring to avoid OCOIs. A contractor serving in a management support role may be precluded from providing additional services on projects, activities, or contracts under its oversight due to potential conflicts of interest.

OCOI Screening

Prior to submitting a proposal, each submitter or proposer will conduct an internal review of its current affiliations and will require its team members to identify potential, real, or perceived OCOIs relative to the anticipated procurement. Potential submitters or proposers will be notified that existing or future contractual obligations relative to the proposed procurement may present an OCOI that may require avoidance, neutralization, or mitigation.

Disqualification

Prior to the award of a contract, VTrans may determine that an OCOI exists which would warrant disqualifying the bidder for award of the contract. Vtrans will discuss the matter with the contractor to determine whether the OCOI can be mitigated to VTrans satisfaction by negotiating terms and conditions of the contract to that effect.

Subcontracts

1. The Contractor shall require from its subcontractors full disclosure of any actual, apparent, or potential OCOI, and report such OCOIs to the VTrans Project Manager.
2. The Contractor shall identify and avoid, neutralize, or mitigate any subcontractor OCOI prior to award of the contract to the satisfaction of the VTrans Project Manager. If the subcontractor's OCOI cannot be avoided, neutralized, or mitigated, the Contractor must obtain the written approval from the appropriate VTrans Division Director prior to entering into the subcontract.
3. If the Contractor becomes aware of a subcontractor's potential or actual OCOI after the contract award, the Contractor agrees that VTrans may require the Contractor to eliminate the subcontractor from its team.

K. CONFLICT OF INTEREST REMEDIES

VTrans may terminate this contract, in whole or in part, or decline to make an award to a contractor if, in VTrans sole discretion, it is deemed necessary to avoid, neutralize, or mitigate an actual or

apparent personal or OCOI. No contract for the construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates, except with the approval of the Secretary of Transportation or authorized representative.

1. If a Contractor fails to disclose facts pertaining to the existence of a potential or actual personal or OCOI or misrepresents relevant information to VTrans, VTrans may terminate the contract for default or pursue such other remedies as may be permitted by law or this contract.
2. The Contractor will have the right to appeal a finding of an actual or potential OCOI to the appropriate Division Director, whose decision will be final, subject to further review only as provided for by state law, regulation or procedure.

L. CONTRACTOR PERSONNEL

1. The Contractor shall employ only qualified personnel to supervise and perform the work. VTrans shall have the right to approve or disapprove personnel hired to perform or supervise work related to the contract.
2. Upon VTrans' request, the Contractor shall supply resumes for staff proposed to work on assignment or under primary contracts for VTrans' review and acceptance or rejection. VTrans retains the right to interview the proposed staff.
3. If contractor has submitted a list of key personnel to VTrans as part of a proposal, the Contractor must notify and seek approval if any changes to the proposed personnel occur during the performance period of the contract.
4. VTrans reserves the right to require removal of any person employed by a contractor from work related to the contract as deemed necessary to protect the interests of the State. The decision of VTrans shall be final and not subject to challenge or appeal beyond the appropriate Division Director.

M. APPROVAL REQUIREMENT FOR HIRING CERTAIN VTRANS EMPLOYEES

1. Contractors are required to obtain VTrans approval prior to making offers of employment to VTrans employees who are engaged in acquisition functions as defined in paragraph I.3 a-h above, or an individual who was engaged in acquisition functions for VTrans within one year of the end of employment with VTrans. Request for approval must be submitted to the appropriate Division Director.
2. Discussions with current VTrans employees engaged in acquisition functions regarding *potential* employment with a contractor creates a conflict of interest for the employee and is prohibited absent a State approved mitigation plan or waiver.

3. Contractors are encouraged to maintain an open dialogue with VTrans regarding such matters and work toward mutually acceptable avoidance and resolution of any issues.

N. ASSIGNMENTS, TRANSFERS, AND SUBLETTING

1. The Contractor shall not assign, sublet, or transfer any interest in the work covered by the contract without the prior written consent of the State and appropriate federal agencies, if applicable. Further, if any subcontractor participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive the prior written consent of the State.
2. The approval or consent to assign, sublet, or assign any portion of the work shall in no way relieve the Contractor of its responsibility to perform that portion of the work so affected. Except as otherwise provided in these specifications, the form of the subcontractor's contract shall be as developed by the contractor.
3. Any authorized subcontracts shall contain all the same provisions specified for and attached to the original contract with the State.

O. PERFORMANCE AND COMPLETION OF WORK

1. The Contractor shall perform the services specified in accordance with the terms of the contract and shall complete the contracted services by the completion dates specified in the contract.
2. Apart from ongoing obligations (*e.g.*, insurance, ownership of the work, and appearances), upon completion of all services covered under the contract and payment of the agreed upon fee, the contract with its mutual obligations shall be terminated.
3. If, at any time during or after performance of the contract, the Contractor discovers any design errors or other issues that warrant changes, the contractor shall notify the Project Manager immediately. This paragraph also applies to those projects that are under construction or have been constructed.

P. CONTINUING OBLIGATIONS

The Contractor agrees that if, because of a death or other occurrences, it becomes impossible to effectively perform its services in compliance with the contract, neither the contractor nor its surviving principals shall be relieved of their obligations to complete the services under the contract. However, the State may terminate the contract if it considers a death, incapacity, or other removal of any principal(s) or key project personnel to be a loss of such magnitude that it would affect the contractor's ability to satisfactorily comply with the contract.

Q. APPEARANCES

1. Hearings and Conferences. The Contractor shall provide professional services required by

the State that are necessary for furtherance of any work covered under the contract. Professional services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain, or defend its services provided under the contract.

2. The Contractor shall serve as a liaison if the State deems it necessary for the furtherance of the work and participate with the State, at any reasonable time, in conferences, concerning interpretation and evaluation of all services provided under the contract.
3. The Contractor further agrees to participate in meetings with the State, applicable Federal Agencies, or any other interested or affected participants for the purpose of review or resolution of any conflicts pertaining to the contract. The Contractor shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto in accordance with the contract.
4. Appearance as Witness. When required by the State, the Contractor, or an appropriate representative, shall prepare for and appear in, on behalf of the State, any litigation or other legal proceeding concerning any relevant project or related contract. The contractor shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto in accordance with the contract.

R. CHANGES AND AMENDMENTS

1. VTrans may, upon written notice, require changes, additions, or deletions to the work or contract. Whenever possible, any such adjustments shall be administered under the appropriate fee schedule or payment provisions established in the contract based on the adjusted quantity of work.
2. The State may, upon written notice, and without invalidating the contract, require changes resulting from the revision or abandonment of work already satisfactorily performed by the Contractor or changes in the statement of work section of the contract.
3. If the value of such changes, additions, or deletions is not otherwise reflected in payments to the contractor pursuant to the contract, or if such changes require additional time or expense to perform the work, the contract may be amended accordingly.
4. Changes to the scope, duration or value of the contract will require amendment of the contract, approved by the State's Secretary of Transportation or other official delegated such authority.
5. The Contractor agrees to maintain complete and accurate records, in a form satisfactory to VTrans, for any extra work or additional services in accordance with the contract and the Contractor shall perform such work or services only after an amendment has been fully executed or a written notice to proceed is issued by VTrans.

S. EXTENSION OF TIME

1. The contractor may request in writing an extension of the allotted time for completion of the work. A request for extension will be evaluated, and if VTrans determines that the justification is valid, an extension of time for completion of the work may be granted. A request for extension of time must be made before the contractor is in default.
2. The decision of VTrans relative to granting an extension of time shall be final and binding, and may result in damages owed to the State by the contractor.
3. Neither party hereto shall be held responsible for delay in performing the work encompassed herein when such delay is due to unforeseeable causes such as, but not limited to, acts of God or a public enemy, fire, strikes, floods, or legal acts of public authorities.

T. CONTRACTOR ERRORS AND OMISSIONS

1. “Professional negligence” resulting in errors and omissions in the work product of the contractor or subcontractors must be corrected by the contractor at no cost to the State, when it is determined that the error or omission was a direct cause of the contractor’s work. The contractor may be liable for the State’s costs and other damages resulting from errors or deficiencies in designs furnished under its contract.
2. When VTrans becomes aware of an error or omission on the part of the contractor or subcontractors, VTrans will inform the contractor and provide an opportunity for discussion and correction, if applicable. Discussions will not relieve the contractor from complying with any VTrans-ordered corrections.
3. VTrans’ review, approval, or acceptance of or payment for the services required under this contract shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
4. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

U. DISPUTE RESOLUTION.

1. Design Professionals: In cases where VTrans believes damages are owed by a contractor, VTrans will attempt to negotiate a resolution with the contractor. If requested in writing by either party, negotiations may take the form of structured non-binding mediation with the assistance of a mediator on a “without prejudice” basis. The mediator shall be appointed by agreement of the parties, and the fees split equally between the parties. Negotiations or mediation will not bar either party from pursuing any other available remedies except as mutually agreed to in a written mediation agreement.

2. Construction Services Professionals: The parties shall attempt to resolve any disputes that may arise under the contract by informal negotiation, with the approval of the appropriate Division Director. If the dispute is not resolved, the Director shall issue a decision, which the Contractor may appeal in writing to the Transportation Board, through the Director, within 30 calendar days of the Director's decision. The notice of appeal shall completely outline the nature and extent of the issue(s) appealed and shall include copies of any and all supporting documentation. The decision of the Transportation Board may be appealed to Vermont Superior Court by either party as provided in 19 V.S.A. § 5.

V. RETAINAGE AND LIQUIDATED DAMAGES

1. Pursuant to the provisions of Agency of Administration Bulletin 3.5 – Contracting Procedures, VTrans has considered whether services contracts should contain provisions that provide for liquidated damages and/or retainage. As a general principle, based on experience and policy, VTrans has generally chosen not to include liquidated damages and retainage in its services contracts.
2. Should VTrans believe that liquidated damages or retainage provision are advisable in a particular contract, VTrans will include such provisions in the contract.

W. NO ADVANTAGE FROM ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS.

Neither the contractor nor the State shall take advantage or be afforded any benefit as the result of apparent error(s) or omission(s) in the contract documents. If either party discovers error(s) or omission(s), it shall immediately notify the other.

X. HOSTILE ACTS

Except as provided below, or otherwise agreed to in writing by a duly authorized representative of the State, the Contractor agrees that during the term of this contract, and also after termination of this contract, it will not represent or render assistance to anyone in any matter, proceeding, or lawsuit against or otherwise adverse to the interests of the State or any of its agencies or instrumentalities in a matter, proceeding, or lawsuit related to any aspects of any work or projects to which this contract relates. Contractor also agrees to include written provision in any of contractor's subcontracts with others relating to this contract, providing that such subcontractors also recognize and agree to be bound by this duty of loyalty to the State regarding any aspects of any work or projects to which this contract relates.

Y. RESPONSIBILITY FOR SUPERVISION

The contractor shall be responsible for supervision of contractor employees and subcontractors for all work performed under the contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions, and contents of work performed under the contract.

Z. WORK SCHEDULE AND PROGRESS REPORTS

As required by VTrans, prior to initiating any work, the Contractor shall work with VTrans' Project Manager to develop a work schedule showing how the contractor will complete the various phases of work to meet the completion date and any interim submission dates in the contract. VTrans will use this work schedule to monitor the contractor.

The Contractor during the life of the contract shall make monthly progress reports, or as otherwise determined by the Project Manager, or set forth in the statement of work, indicating the work achieved through the date of the report. The Contractor shall link the monthly progress reports to the schedule. The report shall indicate any matters that have, or are anticipated to, adversely affected progress of the work. VTrans may require the Contractor to prepare a revised work schedule in the event that a specific progress achievement falls behind the scheduled progress by more than thirty (30) days. The revised work schedule shall be due as of the date specified by VTrans.

AA. WORK ASSIGNED UNDER PRIMARY-TYPE CONTRACTS

Specific tasks or projects under primary (ie. retainer or Indefinite Delivery/Indefinite Quantity ["IDIQ"]) type contracts will be awarded and managed as provided in the scope of work section of the contract. Contractors should not begin work on any task or project under a primary contract until they have received authorization as described in the scope of work.

BB. UTILITIES

Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by proposed construction, the Contractor shall consult with the State's Utility Section and initiate contacts or discussions with the affected owners regarding requirements necessary for revision of facilities, both above and below ground. All revisions must be completely and accurately exhibited on detail sheets or plans. The Contractor shall inform the State, in writing, of all contacts with utility facility owners, and the results thereof. Further details should be provided in the scope of work section of the contract.

CC. PUBLIC RELATIONS

Whenever it is necessary to perform work in the field (*e.g.*, with respect to reconnaissance, testing, construction inspection, and surveying) the contractor shall endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the contractor shall conduct themselves with propriety. If there is a need to enter upon private property to accomplish the work under the contract, the Contractor shall inform property owners and tenants in a timely manner and in accordance with relevant statutes. All work will be done with minimum damage to the land and disturbance to the owners thereof. Upon request of the Contractor, the State shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the contractor is acting on behalf of the State.

DD. INSPECTION OF WORK

1. The State and applicable federal agencies shall, at all times, have access to the contractor's work for the purposes of inspection, accounting, and auditing, and the Contractor shall provide appropriate and necessary access to accomplish inspections, accounting, and auditing.
2. The contractor shall permit the State and its representatives the opportunity at any time to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the Contractor pursuant to the contract.
3. A conference, visit to a site, or inspection of the work may be held at the request of the Contractor, State, and appropriate federal agencies.

EE. WRITTEN DELIVERABLES/REPORTS

All communications and deliverables presented under terms of the contract shall be in a form and format identified in the statement of work section of the contract, including, but not limited to CADD Requirements, Data Specifications, and Geographic Information System Requirements.

FF. ELECTRONIC DATA MEDIA.

VTrans Web Page and File Transfer Protocol (FTP) Site Disclaimer. The files located on the VTrans web page and FTP site are subject to change. The contractor is responsible for maintaining contact with VTrans to determine if any changes affect the work produced by the contractor. Although VTrans makes every effort to ensure the accuracy of its work, it cannot guarantee that transferred files are error free.

GG. REVIEWS AND APPROVALS.

All work prepared by the Contractor, subcontractors, and representatives thereof pursuant to the contract shall be subject to review and approval by VTrans. Approval for any work shall be documented in writing. Approvals shall not relieve a contractor of its professional obligation to correct any defects or errors in the work at the contractor's expense.

The pertinent federal agencies may independently review and comment on the contract deliverables. The Contractor, through VTrans, shall respond to all official comments regardless of their source. The Contractor shall supply VTrans with written copies of all correspondence relating to reviews. All comments must be satisfactorily resolved before the affected work is advanced.

HH. PAYMENT PROCEDURES

Payment procedures will be set forth in Attachment B.

II. AUDIT REQUIREMENTS

1. Design and Engineering Contracts of Five Hundred Thousand Dollars (\$500,000.00) and over:
 - a. Annually, the Contractor shall furnish the State with independently-prepared, properly supported indirect cost rates for all the time periods covered under the contract. These rates must be developed in accordance with the cost principles in 48 CFR Part 31. Unless otherwise specified in the contract, the Contractor's overhead rate shall be based on actual, audited overhead costs.

2. **Design and Engineering Contracts** Under Five Hundred Thousand Dollars (\$500,000.00):
 - a. The contractor may submit internally generated indirect cost computations and the related schedules.

 - b. Additional information may be requested from a new contractor executing a contract under \$500,000.00 or in some cases from contractors with existing or previous contracts with the State if any of the following conditions or areas of concern exist:
 - i. There is insufficient knowledge of the consultant's accounting system.

 - ii. There is previous unfavorable experience regarding the reliability of the consultant's accounting system

 - iii. The contract involves procurement of new equipment or supplies for which cost experience is lacking.

 - iv. There have been issues with adherence to Federal and State regulations and policies.

 - v. Capacity – ensuring ongoing delivery

JJ. RECORDS RETENTION:

The Contractor shall maintain all records related to the contract for a period of seven (7) years unless required to keep them longer as indicated Federal provisions or in the scope of work section of the contract.

KK. REGISTRATION WITH SECRETARY OF STATE

1. The Contractor shall be registered with the Vermont Secretary of State to do business in the State of Vermont if the Contractor:
 - a. Is a domestic or foreign corporation,

- b. Is a resident co-partner or resident member of a co-partnership or association,
 - c. Is a non-resident individual doing business in Vermont in his or her individual capacity,
 - d. Is doing business in Vermont under any name other than the Contractor's own personal name.
2. This registration must be complete prior to contract execution and maintained throughout the life of the contract.

LL. SITE VISIT

Where relevant to the work to be performed under the contract, contractors must inspect physical locations of construction when required in the statement of work and will not be compensated for any differing site conditions that could have been discovered during the inspection.

MM. MARKETING

The Contractor is prohibited from representing in marketing or promotional materials that VTrans is a co-sponsor in any project, or otherwise representing any sort of collaboration or partnership with VTrans; making claims of general endorsement by VTrans; and from using the VTrans logo, seal, or letterhead. In accordance with Attachment C, Standard State Provisions for Contracts and Grants, the Contractor has VTrans permission to refer to the fact that the Contractor has, or previously had, contracts with VTrans in marketing or promotional materials, as long as purely factual statements are made, and no general endorsement is asserted. Additionally, the Contractor may provide factual information regarding work under VTrans projects to other potential employers or identify designated VTrans employees or officials who could be consulted by as a reference about such prior work for VTrans. Designated VTrans employees may provide factual information regarding a Contractor's work under VTrans contracts to third parties requesting references. Contractor's providing false information regarding work under VTrans contract will be subject to administrative, civil, and criminal penalties.

Approved By: _____

E-SIGNED by Joe Flynn
on 2020-05-29 18:21:30 GMT

Secretary of Transportation



Federal Terms and Conditions Services (Non-Construction)

VERMONT AGENCY OF TRANSPORTATION

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A. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>).
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - ii. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement,

theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
- iv. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- v. Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal; and
- vi. Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions"

refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

- 4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Lower Tier Participants:

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:
 - i. is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - ii. is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal; and
 - iii. is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

B. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant; the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

C. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY, NONDISCRIMINATION AND RELATED CONTRACT REQUIREMENTS

Disadvantaged Business Enterprise (DBE) Policy. It shall be the policy of the Vermont Agency of Transportation (VTrans) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBEs) to participate in the performance of all contracts and subcontracts financed with Federal funds as specified by the regulations of the United States Department of Transportation (USDOT), Federal Highway Administration and as set forth below.

1. Policy. It is the policy of USDOT that DBEs as defined in 49 Code of Federal Regulation (CFR) Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 and 23 CFR, Chapter 1, Part 230, Subpart b apply to this contract.
2. DBE Obligation. The State and its Contractors agree to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. Each subcontract the prime contractor signs with a subcontractor must include this assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as VTrans deems appropriate.
3. Sanctions for Noncompliance. The Contractor is hereby advised that failure of the Contractor, or any Subcontractor performing work under this contract, to carry out the requirements set forth in paragraphs 1 and 2 above shall constitute a breach of contract and after the notification of the Vermont Agency of Transportation, Secretary of Transportation, may result in termination of this contract by the State or such remedy as the State deems necessary.
4. Inclusion in Subcontracts. The Contractor shall insert in each of its subcontracts this Disadvantaged Business Enterprise (DBE) Policy and also a clause requiring its subcontractors to include this same Policy in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of the Policy in any further subcontract that may in turn be made. This Policy shall not be incorporated by reference.

Disadvantaged Business Enterprise (DBE) Program Goals. The Vermont Agency of Transportation (VTrans) is required to set an overall DBE goal for participation in all transportation related Federal-aid projects. The goal is determined following guidelines set

forth in 49 CFR 26.45, and based on the availability of ready, willing and able DBEs who submitted bids and quotes for transportation related projects, compared as a percentage of all available contractors who submitted bids and quotes for transportation related projects during the same time period. The DBE goal may be adjusted to take into account other factors impacting DBE utilization, in an effort to narrowly tailor the overall DBE goal. The detailed goal setting methodology and current overall DBE goal may be viewed on the VTrans website at: <http://vtranscivilrights.vermont.gov/doing-business/dbe-center/program-goals>.

VTrans currently utilizes a race/gender neutral policy to fulfill its overall DBE goals, and relies on the voluntary participation of contractors to utilize certified DBEs on every project sufficient to obtain the Agency's overall DBE goal. In order for this practice to continue, contractors must be proactive and solicit bids and quotes from certified DBEs for use when submitting their own bids, and employ certified DBEs when participating on transportation related projects. Otherwise, VTrans may have to implement specified contract goals on projects to ensure the overall DBE goals are met. VTrans may include specific DBE contract goals in certain cases to ensure DBE participation, if failure to obtain the project DBE goal would negatively impact the Agency's overall DBE goal because of the size of the contract.

Disadvantaged Business Enterprise (DBE) Definition. A DBE is defined as a business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purposes of this definition:

- a. "Socially and economically disadvantaged person" means an individual who is a citizen or lawful permanent resident of the United States and who is a Woman, Black, Hispanic, Portuguese, Native American, Asian American, or a member of another group, or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.
- b. "Owned and controlled" means a business which is:
 - i. A sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
 - ii. A partnership, joint venture or limited liability company in which at least 51% of the beneficial ownership interests legitimately is held by a disadvantaged person(s).
 - iii. A corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with percentage of ownership. Disadvantaged participation in a joint venture must also be based on the sharing of real earnings, as above. If the disadvantaged group ownership interests are real, substantial and continuing and not created solely to meet the requirements of the program, a firm is considered a bona fide DBE.

Certified DBE Directory. The current Vermont Unified Disadvantaged Business Enterprise (DBE) Directory is available online at:

<http://vtranscivilrights.vermont.gov/doing-business/dbe-center/directory>. This directory contains all currently certified DBEs available for work in Vermont, and is updated continuously. Only firms listed in this directory are eligible for DBE credit on Vermont Federal-aid projects. If you have questions about DBE certification, or do not have access to the Internet, please call the DBE Program Manager at (802) 828-5858 for assistance.

Counting DBE Participation Towards Project Goals. In order for payments made to DBE contractors to be counted toward DBE goals, the DBE contractors must perform a commercially useful function (CUF). The DBE must be responsible for execution of the work of the contract and must carry out its responsibilities by actually performing, managing, and supervising the work involved, consistent with standard industry practices.

This means that:

- The DBE must also be responsible for ordering its own materials and supplies, determining quantity and quality, negotiating price, installing (where applicable) and paying for the material itself;
- The DBE must perform work commensurate with the amount of its contract;
- The DBE's contribution cannot be that of an extra participant or a conduit through which funds are passed in order to obtain the appearance of DBE participation;
- The DBE must exercise responsibility for at least fifty percent of the total cost of its contract with its own workforce;
- None of the DBE's work can be subcontracted back to the prime contractor, nor can the DBE employ the prime's or other subcontractor's supervisors currently working on the project;
- The DBE's labor force must be separate and apart from that of the prime contractor or other subcontractors on the project. Transferring crews between primes, subcontractors, and DBE contractors is not acceptable;
- The DBE owner must hold necessary professional or craft license(s) or certification(s) for the type of work he/she performs on the project;
- The DBE may rent or lease, at competitive rates, equipment needed on the project from customary leasing sources or from other subcontractors on the project. Allowable credit for payments made to DBEs for work performed. A contractor may take credit for payments made to a certified DBE that satisfies CUF requirements at the following rate:

- A DBE Prime Contractor: Count 100% of the value of the work performed by own forces, equipment and materials towards the DBE goals.
- An approved DBE subcontractor: Count 100% of the value of work performed by the DBE's own forces, equipment and materials, excluding the following:
 - The cost of materials/supplies purchased from a non-DBE Prime Contractor.
 - The value of work provided by non-DBE lower tier subcontractors, including non-DBE trucking to deliver asphalt to a DBE contractor.
- A DBE owner-operator of construction equipment: Count 100% of expenditures committed.
- A DBE manufacturer: Count 100% of expenditures committed. The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
- A regular DBE dealer/supplier: Count 60% of expenditures committed. A regular dealer/supplier is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment, in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may be a dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business, if the person both owns and operates distribution equipment for the products, by the means of a long-term agreement, and not by a contract by contract basis.
- A DBE broker: Count for DBE credit only the fees or commissions charged for assistance in the procurement, and, fees and transportation charges for the delivery of materials or supplies required at the job site, but not the cost of materials procured. A broker is defined as any person(s) or firm who arranges or expedites transactions for materials or supplies, and does not take physical possession of the materials or supplies at their place of business for resale.
- A DBE renter of construction equipment to a contractor: Count 20% of expenditures committed, with or without operator.
- A bona fide DBE service provider: Count 100% of reasonable fees or commissions. Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract. Eligible services also include agencies providing bonding and insurance specifically required for the performance of the contract.

- A trucking, hauling or delivery operation: Count 100% of expenditures committed when trucks are owned, operated, licensed and insured by the DBE and used on the contract and, if applicable, includes the cost of the materials and supplies. 100% of expenditures committed when the DBE leases trucks from another DBE firm including an owner-operator. 100% of reasonable fees, or commissions, the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.
- Any combination of the above.

Removal of Approved DBE From Transportation Related Project. Contractors may not terminate for convenience, any approved DBE subcontractor and perform the work with their own forces, without prior written consent from the VTrans DBE Program Manager or VTrans Chief of Civil Rights.

Federal-aid projects which specify a DBE contract goal. The provisions of the Vermont Agency of Transportation Supplemental Specification – Disadvantaged Business Enterprise (DBE) Utilization (CA 160) shall apply to all VTrans Federal-aid projects which specify a DBE contract goal.

Compliance with Prompt Payment Statute. In accordance with Vermont’s Prompt Payment Act and VTrans Standard Specifications for Construction, Section 107.01(g), the Contractor shall fully comply with the provisions of 9 V.S.A. Chapter 102, also referred to as Act No. 74 of 1991 or the Prompt Payment Act, as amended.

Subcontractor Payments. In accordance with VTrans Standard Specifications for Construction, Section 107.01(h), on all federal-aid and state funded contracts, the Contractor, during the life of the Contract and on a monthly basis, shall submit electronically, a listing of payments to subcontractors on the form specified by the State and made available at: <http://vtranscivilrights.vermont.gov/doing-business/contractors-center/compliance>. Electronic reports shall be filed with the Agency Office of Civil Rights by an authorized representative and received in the Agency Office of Civil Rights on or before the tenth working day after month end. Contractors without access to the internet shall obtain and submit manual reports to the Agency Office of Civil Rights. Manual reports shall be signed by an authorized representative, sent to the Agency Office of Civil Rights, and postmarked on or before the tenth working day after month end. There shall be no direct compensation allowed the Contractor for this work, but the cost thereof shall be included in the general cost of the work. In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary agreement, payments made to subcontractors after seven days from receipt of a corresponding progress payment by the State to the Contractor, or seven days after receipt of a subcontractor’s invoice, whichever is later, violate this agreement. Violations shall be reported to the Agency Office of Civil Rights for review. Failure to resolve disputes in a timely manner may result in a complaint made to the Agency Pre-qualification Committee. In this Committee’s judgment, appropriate penalties may be involved for failure to comply with this specification. Penalties may include suspension, reduction or revocation of the Contractor’s pre-qualification rating. This clause shall be included in the prime Contractor’s Contract made with all if its subcontractors.

D. NONDISCRIMINATION AND RELATED CONTRACT REQUIREMENTS

The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60- 1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 USC 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
 - b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the- job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
 - a. The contractor will, unless precluded by a valid bargaining agreement, conduct

systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
 - c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
 - b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment

vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
 - a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
 - b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. Assurance Required by 49 CFR 26.13(b):
 - a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
 - b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

- a. The records kept by the contractor shall document the following:
 - i. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - iii. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

E. NONSEGREGATED FACILITIES

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

F. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
 - a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a

subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- i. the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 - ii. the prime contractor remains responsible for the quality of the work of the leased employees;
 - iii. the prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - iv. the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
- b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
 3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
 4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
 5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

G. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

H. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project.

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to

be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented; Shall be fined under this title or imprisoned not more than 5 years or both."

I. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

J. ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

K. USED OR RE-CYCLED OR RECOVERED MATERIALS

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Certification for Federal-Aid Contracts

The prospective participant certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is material representation of the fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Assurance Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement

as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Assurance Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin), as implemented by 49 C.F.R. § 21.1 *et seq.* and 49 C.F.R. § 303;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (102 Stat. 28.), (“...*which restore[d] the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.*”);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Justice regulations at 28 C.F.R. parts 35 and 36, and Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*), as implemented by 49 C.F.R. § 25.1 *et seq.*

State Contract No.
Federal-Aid Project:

CERTIFICATION OF CONTRACTOR / CONSULTANT

I hereby certify that I am the _____ and duly authorized representative of the firm of _____, whose address is _____, and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or the consideration of any kind for, or in connection with, procuring or carrying out the contract; except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the State Agency of Transportation and the U. S. Department of Transportation, Federal Highway Administration, in connection with this contract involving participation of Federal-Aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature

Date

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization: _____

Street address: _____

City, State, Zip: _____

CERTIFIED BY: (type or print)

TITLE:

(signature)

(date)

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> : Congressional District, if known:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, <i>if applicable</i> : _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

STATE OF VERMONT
AGENCY OF TRANSPORTATION
DEBARMENT AND NON-COLLUSION CERTIFICATION

I, _____, representing
(Official Authorized to Sign Contracts)

_____ of _____,
(Individual, Partnership or Corporation) (City or State)

hereby certify under the penalties of perjury under the laws of the State of Vermont and the United States that on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid for the Vermont project:

(Project Name)

_____ project located on _____,
(Project Number) (Route or Highway)

bids opened at _____,
(Town or City)

Vermont on _____.
(Date)

I further certify under the penalties of perjury under the laws of the State of Vermont and the United States that except as noted below said individual, partnership or corporation or any person associated therewith in any capacity is not currently, and has not been within the past three (3) years, suspended, debarred, voluntarily excluded or determined ineligible by any Federal or State Agency; does not have a proposed suspension, debarment, voluntary exclusion or ineligibility determination pending; and has not been indicted, convicted, or had a civil judgement rendered against (it, him, her, them) by a court having jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Exceptions: _____ No _____ Yes. (If yes complete second page of this form.)

(Name of Individual, Partnership or Corporation)

(Signature of Official Authorized to Sign Contracts)

(Name of Individual Signing Affidavit)

(Title of Individual Signing Affidavit)

Exceptions will not necessarily result in denial of award but will be considered in determining bidder responsibility. **For any exception noted, indicate below to whom it applies, initiating agency, and dates of action.** Providing false information may result in criminal prosecution or administration sanctions.

EXCEPTIONS:

STATE OF VERMONT
AGENCY OF TRANSPORTATION

November, 1985
CA-109

CONTRACTOR'S EEO CERTIFICATION FORM

Certification with regard to the Performance of Previous Contracts of Subcontracts subject to the Equal Opportunity Clause and the filing of Required Reports.

The bidder _____, proposed subcontractor _____, hereby certifies that he/she has _____, has not _____ participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246 as amended, and that he/she has _____, has not _____, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Company	By	Title
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NOTE: The above certification is required by the Equal Employment Opportunity regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5 (Generally only contracts or subcontracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration, or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

RFP/PROJECT NAME & NUMBER:
DATE:

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

Self Reporting
Form 1 of 2

This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.

The Vermont Agency of Transportation, in accordance with Section 32 of Act 54 (2009), as amended by Section 17 of Act 142 (2010) and further amended by Section 6 of Act 50 (2011), and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.

Bidder is required to self report the following information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees. The Agency of Transportation is requiring information on any incidents that occurred in the previous 12 months. Attach additional pages as necessary. If not applicable, so state.

Summary of Detailed Information	Date of Notification	Outcome

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT: Bidder hereby certifies that the company/individual is in compliance with the requirements as detailed in Section 32 of Act 54(2009), as amended by Section 17 of Act 142 (2010) and further amended by Section 6 of Act 50 (2011).

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Signature (Request/Report Not Valid Unless Signed) *

(Type or Print)

*Form must be signed by individual authorized to sign on the bidder's behalf.

DO NOT WRITE IN THIS SPACE – AGENCY USE ONLY	
VDOL CHECKED RE: ACT 54 2009, AND AMENDMENTS	<input type="checkbox"/>

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

**Subcontractor Reporting Form
Form 2 of 2**

This form must be completed in its entirety by the Contractor and included in all requests to sublet or assign work as outlined in Section 108.01 of the Standard Specifications for Construction. This form must be updated as necessary and provided to the State as additional subcontractors are hired.

The Agency of Transportation in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires the contractor to comply with the following provisions and requirements:

The Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

Additionally, the Contractor shall collect and retain evidence of subcontractors' workers' compensation insurance, such as the ACORD insurance coverage summary sheet. Agency of Transportation will periodically verify the Contractors' compliance.

Subcontractor	Insured By		Subcontractor's Sub	Insured By

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form to: Vermont Agency of Transportation
Contract Administration
Barre City Place
219 North Main Street, Suite 105
Barre, Vermont 05641

PAST PERFORMANCE & REFERENCE FORM

Contractor:

Provide a summary of three (3) recent projects you provided services for that are in line with the Scope of Work for this RFP. Include any special circumstances that required creative approaches or dispute resolution. Each project must include a reference with contact information.

PROJECT 1

Company Name:

Contact Name:

E-mail:

Phone:

PAST PERFORMANCE & REFERENCE FORM

Contractor:

Provide a summary of three (3) recent projects you provided services for that are in line with the Scope of Work for this RFP. Include any special circumstances that required creative approaches or dispute resolution. Each project must include a reference with contact information.

PROJECT 2

Company Name:

Contact Name:

Phone:

E-mail:

PAST PERFORMANCE & REFERENCE FORM

Contractor:

Provide a summary of three (3) recent projects you provided services for that are in line with the Scope of Work for this RFP. Include any special circumstances that required creative approaches or dispute resolution. Each project must include a reference with contact information.

PROJECT 3

Company Name:

Contact Name:

E-mail:

Phone:

Contractor and Sub-Contrators Information
Use additional pages as necessary

Name of Your Company	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
<hr/>	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
<hr/>	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
<hr/>	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
<hr/>	

Submitted By (Your Company):	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	
Name of Company (sub)	
Mailing Address	
Office Telephone	
Contact Person #1 Name	
Telephone	
Email	
Contact Person #2 Name	
Telephone	
Email	

