



AGENCY OF TRANSPORTATION

PROCEDURES FOR SELECTING CONTRACTORS
AND
SPECIFICATIONS FOR CONTRACTOR SERVICES,
INCLUDING
CUSTOMARY STATE CONTRACT PROVISIONS

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REVISIONS

December 29, 2008

- Appendix A - Removed "Standard Contract for Personal Services" and replaced with revised version dated December 8, 2008.
- Appendix B - Removed "Standard State Contract Provisions" dated May 23, 2008 and replaced with "Standard State Provisions for Contracts and Grants" dated December 8, 2008.

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DIVISION 100 - GENERAL PROVISIONS**SECTION 101 - DEFINITIONS AND TERMS**

Wherever used in these Specifications for Contractor Services or in any documents that these specifications pertain to or govern; abbreviations may be used in place of a word or phrase and definitions may be used to interpret statements for the meaning of words, phrases or expressions. The intent and meaning for abbreviations and definitions shall be interpreted as herein set forth:

101.01 ABBREVIATIONS.

CADD	Computer Aided Drafting and Design
CFR	Code of Federal Regulations
CPM	Critical Path Method
CSC	Contractor Selection Committee
DBE	Disadvantaged Business Enterprise
EDM	Electronic Data Media
FTP	File Transfer Protocol
LOI	Letter of Interest
RFP	Request for Proposals
SOW	Scope of Work
U.S.C.	United States Code
USDOT	United States Department of Transportation
USEPA	United States Environmental Protection Agency
VOSHA	Vermont Occupational Safety and Health Act
V.S.A.	Vermont Statutes Annotated
VTrans (VAOT)	Vermont Agency of Transportation

101.02 DEFINITIONS. Wherever in these specifications or in other contract documents the following terms or pronouns in place of these are used, the intent and meaning shall be interpreted as follows, unless that context makes clear that another meaning is intended:

ACCEPTANCE: (Reviews-Acceptances) The State's determination that a deliverable meets the requirements of the contract. The State's determination shall prevail in the interpretation of acceptability.

ACCEPTANCE DATE: The date of the written notice to the contractor by the Project Manager that the project is complete and final payments, if applicable, have been approved as provided by the contract.

AGENCY: State of Vermont, Agency of Transportation, also referred to as VAOT or VTrans.

AGREEMENT: See CONTRACT.

AMENDMENT: A change to a contract that has been reviewed and approved, by signed document, by all parties to the contract.

AUDIT: An examination of the financial accounting and record systems of an entity in accordance with Generally Accepted Governmental Auditing Standards (yellow book), applicable accounting principles, and contract terms.

CALENDAR DAY: A day as shown and sequenced on the calendar, beginning and ending at midnight, as differentiated from work days or other intermittent time references.

COMPETITIVE NEGOTIATION: A means of procurement involving negotiations, based on qualifications, as described in Title IX of Federal Property and Administrative Services Act of 1949, or the formal procedure permitted by Title 19 V.S.A. Section 10a. Any competitively procured contract awarded without using a sealed bid process is considered a negotiated contract.

CONTRACT: A written contract between the VTrans and another legally distinct entity for the provision of service(s) and/or product(s). Only the Secretary of the Agency and the Deputy Secretary of the Agency have the authority to sign a contract over \$10,000 on the behalf of the Agency, as specified in the VT Agency of Administration Bulletin 3.3 - Delegation of Authority for Signing Documents. The term contract includes all such contracts whether or not characterized as a "contract", "agreement", "miscellaneous contract", "letter of agreement", "amendment" or other similar term.

CONTRACTOR: An individual or legally distinct entity providing contractual services and/or products directly to the Agency.

DIRECTOR: A Division manager within the Agency who reports directly to Vermont's Secretary of Transportation.

DIVISION: A major component of the Agency, headed by a member of the Agency's executive staff. Each Division is subdivided into Sections and Units. (Note: For contracts subject to these specifications the Department of Motor Vehicles is also defined as a Division.)

EXTRA WORK OR ADDITIONAL SERVICES: Services determined to be required that are not specified in a contract.

FIXED FEE: A specific amount of money to be paid in addition to the hourly or other rates for the work performed pursuant to a contract which is determined by taking into account the size, complexity, duration, and degree of risk involved in the work. Overruns in the work and/or the duration of the work shall not warrant an increase in the fixed fee.

OVERTIME PREMIUM RATE: Time and one-half or some other multiple for hours worked in excess of 40 hours in a workweek or for hours worked on weekends, holidays, and other times when work is not generally performed.

PROGRESS PAYMENTS: Partial payments made for services performed under the contract as the work progresses, at intervals and within limitations designated in the contract.

PROGRESS REPORT: A comprehensive narrative, graphic and/or tabular document/report, whether in hard copy or electronic format, indicating actual work accomplished by the contractor.

PROJECT: All activities performed and expenditures made to accomplish a specific goal. A contract may encompass part of, or more than, one project.

PROJECT MANAGER: A VTrans representative responsible for administrative management of a project and coordination of all activities related to the project, including the contract(s) to accomplish the goals of the project.

SCOPE OF WORK: A detailed description of all services and actions required of a contractor in a contract.

STATE: The State of Vermont as represented through and by VTrans.

SUBCONTRACTOR: An individual or legally distinct entity to whom or which the contractor sublets part of the work.

VALUABLE PAPERS: Material bearing written or printed information of importance, utility or service relating to a project or contract. Electronic information is also included.

WORK: The furnishing of all labor, materials, equipment, and/or incidentals necessary or convenient to the successful completion of the contract and carrying out of the duties and obligations imposed by the contract.

WORK SCHEDULE: The approved CPM or other work schedule prepared and submitted by the contractor.

SECTION 102-PREQUALIFICATION, SELECTION, PROPOSALS AND CONTRACT AWARDS

102.01 GENERAL. Section 102 covers VTrans requirements and procedures for contractor selection and contract processing for contractor service contracts.

102.02 CONTRACTOR QUALIFICATIONS. In the manner defined under 23 CFR Part 172 - Administration of Engineering and Design Related Service Contracts and similar CFR provisions, VTrans will annually advertise for potential contractors interested in performing professional services. To register with VTrans and be included on lists to perform work, potential contractors must fill out and submit Standard Form 330, Architect Engineer Qualifications, to the VTrans Contract Administration Section, National Life Building, 1 National Life Drive, Drawer 33, Montpelier, VT 05633-5001. A potential contractor may submit any additional information it believes will be beneficial to clarify its specialization and/or qualifications.

Contract Administration will maintain inventory files of all registered potential contractors, indexed by discipline, and an alphabetical listing of all firms by name.

Except for the Architectural/Engineering design field, qualification and/or registration of potential contractors desiring to perform contractual services is/are not required. However, all potential contractors are encouraged to register with VTrans Contract Administration to ensure they are considered for work in those disciplines for which they are qualified.

102.03 SCOPE OF WORK. The Project Manager is responsible for preparing a Scope of Work (SOW) for services to be performed pursuant to a contract.

At a minimum, each SOW shall contain the following:

- (a) The purpose and a description of the project, as well as a clear, accurate and detailed description of the work to be performed, including the project number, if assigned.
- (b) A description of standards that the services are required to meet.
- (c) All reporting and delivery requirements.
- (d) A time schedule that the contractor will need to meet.

102.04 ADVERTISEMENT OF SOLICITATIONS. All State departments and agencies are required to post on the Vermont Bid Information System Electronic Bulletin Board information pertaining to all contracts

available for bid with a value exceeding \$10,000.

The Vermont Bid Information System contains a summary of the RFPs, LOIs, Requests for Interest, and Requests for Quotations, job contracts and other opportunities currently being advertised by the State. Interested contractors may access this information at <http://www.vermontbidsystem.com/>

102.05 PROCEDURES FOR SELECTION. Except where otherwise required by federal, state or other laws, ordinances, or regulations, the customary process for selecting contractors for personal services is by competitive negotiation.

102.06 CONTRACTS. The successful contractor must return a signed Standard State of Vermont Contract for Personal Services within fifteen (15) calendar days of receipt (see attached Appendix A).

102.07 PRECEDENCE OF CONTRACT DOCUMENTS. These Specifications for Contractor Services, any Supplemental Specifications, and all other contract related documents are essential parts of the contract, and a requirement occurring in one is as binding as occurring in all. All contract documents are intended to be complementary and to describe and provide for a complete work. In case of discrepancy or conflict, precedence of the contract documents will be determined in the following order:

Contract Document Precedence

- (a) State of Vermont Standard Contract for Personal Services.
- (b) VTrans' Scope of Work.
- (c) VTrans' General Special Provisions for Contractor Services.
- (d) VTrans' Procedures for Selecting Contractors and Specifications for Contractor Services.
- (e) Contractor's Technical and Cost Proposals.

102.08 SHORT LIST DEVELOPMENT, ADVERTISEMENTS AND LETTERS OF INTEREST.

A short list of contractors will be developed by VTrans from a list of qualified contractors or interested contractors determined from responses to a public advertisement. All short lists will contain at least three contractors unless compelling circumstances warrant a reduced number. Contractors on the short list will be sent the RFP. Contractors not on the short list may request a copy of the RFP and submit a proposal. RFP notices will be posted on the VTrans website at <http://www.aot.state.vt.us/> and the Electronic Bulletin Board operated by the Agency of Commerce & Community Development at <http://www.vermontbidsystem.com> and may be advertised in newspapers and/or industry publications.

To be included on the qualified contractors list, a contractor must submit a completed *Standard Form 330 Architect Engineer Qualifications* to the VTrans Office of Contract Administration.

VTrans periodically solicits contractor qualifications for various types of services. Contractors that submit a completed Standard Form 330 will be added to the qualified contractors list. Contractors may submit a Standard Form 330 at anytime.

Occasionally, VTrans solicits for LOIs for services on a specific assignment. Solicitations may appear on the VTrans and Commerce & Community Development websites, in newspapers, and/or industry publications. The solicitation may contain a brief description of the services sought, anticipated schedule requirements, evaluation criteria, and a request for the submission of a LOI and Standard Form 330.

LOIs received from contractors will be evaluated based on the criteria listed in the solicitation. The criteria may include but may not be limited to:

- (a) Experience of firm.
- (b) Experience of key personnel.
- (c) Past performance on similar assignments.
- (d) Current and expected workload.
- (e) Quality and clarity of material submitted.

After the LOIs have been evaluated, a closed short list will be developed. Only those contractors on the closed short list will be provided with an RFP. Proposals will be accepted only from contractors on the closed short list.

At its discretion, VTrans may specify that a closed short list will be developed from the LOI and/or VTrans' qualified contractors list. In such cases, proposals will be accepted only from contractors on the closed short list.

If the solicitation for LOIs does not specify a closed short list, other qualified contractors may propose.

DIVISION 200- GENERAL REQUIREMENTS AND COVENANTS

SECTION 201 - INSURANCE

201.01 GENERAL. Prior to beginning any work pursuant to a contract, the contractor shall have the required insurance coverages in place. The certificate(s) of insurance coverage shall be documented on forms acceptable to the Agency. Compliance with minimum limits and coverages, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the State, must be received prior to the effective date of the

contract. The insurance policy(ies) shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the State. If the contract is for a period greater than one year, evidence of continuing coverage must be submitted to the Agency on an annual basis. Certified copies of any insurance policies may be required. Each policy shall (except the professional liability and workers' compensation policies) name the State of Vermont as an insured for the possible liabilities resulting from the contractor's actions, errors, and/or omissions.

The contractor shall:

- (a) Verify that all subcontractors, agents or workers meet the minimum coverages and limits;
- (b) Maintain current certificates of coverage for all subcontractors, agents and/or workers;
- (c) Where appropriate, verify that all coverages include protection for activities involving hazardous materials; and
- (d) Verify that all work activities related to the contract are covered with at least the minimum coverages and limits. (See Appendix B - STATE OF VERMONT CUSTOMARY STATE CONTRACT PROVISIONS.)

No warranty is made that the coverages and limits required are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that must be met to protect the interests of the State.

201.02 VALUABLE PAPERS AND RECORDS INSURANCE. This Section, 201.02, applies only to those contracts specifically identified as requiring valuable papers insurance. The contractor shall carry valuable papers 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 plans 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).

201.03 RAILROAD PROTECTIVE LIABILITY. When the contract requires work on, over or under the right-of-way of any railroad, the contractor shall provide and file with the Agency, with respect to the 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 named as additional insured, providing for coverage limits of:

- (1) 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/or injury to or destruction of property; and
- (2) 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.

If such 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/or activities, and shall maintain coverage until the work and/or activities is/are accepted by the State.

201.04 RETAINAGE AND LIQUIDATED DAMAGES. Pursuant to the provisions of Agency of Administration Bulletin 3.5 - Contracting Procedures, VTrans has considered whether consultant services contracts should contain provisions that provide for liquidated damages and/or retainage. As a general principle, based on experience and policy, VTrans has chosen not to include liquidated damages and retainage in its consultant services contracts.

However, should a Project Manager believe that liquidated damages and/or retainage provision is/are advisable, necessary and proper for a given consultant services contract, the Project Manager is encouraged to propose such a provision(s) for consideration as part of the Special Provisions for the contract.

201.05 PROFESSIONAL LIABILITY INSURANCE.

- (a) General. This Section, 201.05, applies only to those contracts specifically identified as requiring Errors & Omissions (E&O) Insurance. The contractor shall carry architects/engineers professional liability insurance covering errors and omissions made during performance of contractual duties with the following minimum limits:

\$2,000,000 - Annual Aggregate
\$2,000,000 - Per Claim

- (b) Deductibles. The contractor shall be responsible for any and all deductibles.
- (c) Coverage. Prior to performing any work, the contractor shall provide evidence of E&O insurance coverage defined under this Section. In addition, the contractor shall

maintain continuous professional liability coverage for the period of the contract and for a period of five years following substantial completion of construction.

SECTION 202 - COMPLIANCE WITH LAWS

202.01 GENERAL COMPLIANCE WITH LAWS; RESPONSIBILITY FOR VIOLATION.

The contractor shall observe and comply with all 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 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.

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.

In particular, but not limited thereto, the contractor's attention is directed to the various regulations promulgated and enforced by the United States, VOSHA, environmental protection, and other resource agencies.

202.02 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, that provision shall be deemed severed from the contract, and the remaining provisions shall be carried out with the same force and effect as if the severed provisions had never been a part of the contract.

202.03 DEBARMENT CERTIFICATION. By signing a contract, the contractor certifies to the best of its knowledge and belief that neither it nor its principals:

- (a) Is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency;
- (b) Are not presently suspended, debarred, voluntarily excluded or determined ineligible by any federal/state

agency;

- (c) Do not have a proposed debarment pending; and
- (d) Have not been indicted, convicted, or had a civil judgment rendered against him/her/it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Exceptions will not necessarily result in denial or termination of the contract, but will be considered in determining the contractor's responsibility. The contract shall indicate any exception, identify to whom or to what agency it applies, and state the date(s) of any and all action(s). Providing false information may result in criminal prosecution and/or administrative sanctions.

202.04 LOBBYING. The contractor certifies, by signing the contract, that to the best of its knowledge, belief, and ability:

- (a) No state/federal appropriated funds have been paid or will be paid by or to any person influencing or attempting to influence an officer or employee of a government 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 state/federal contract, the making of any state/federal grant, the making of any state/federal loan, the entering into of any cooperative agreement, or the extension, renewal, amendment or modification of any state/federal contract grant, loan or cooperative agreement.
- (b) If any funds, other than state/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 state/federal agency, a member of Congress, or an employee of a member of Congress in connection with this state/federal contract grant loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (c) That it shall require that the language of this Certification be included in the award documents for all sub awards at all tiers (including subcontractors, sub-grants and agreements under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact, upon which reliance was placed when the contract was made or entered into. Submission of this certification is a prerequisite for making or entering into the contract, imposed by Title 31, Section 1352

U.S.C.

202.05 DBE POLICY REQUIREMENTS.

- (a) Policy: It is the policy of the USDOT that Disadvantaged Business Enterprises (DBE), as defined in 49 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 apply to this contract.
- (b) 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. The State and its contractors shall not discriminate on the basis of race, color, sex, national origin, physical disability or veteran status in the award and performance of USDOT assisted contracts.
- (c) Sanctions for Noncompliance: The contractor is hereby advised that failure of a contractor or subcontractor performing work under this contract to carry out the requirements established under Sections 202.05 (a) and (b) shall constitute a breach of contract and, after notification by the VTrans Secretary, may result in termination of this contract by the State or such remedy as the State may deem appropriate.
- (d) Inclusions in Subcontracts: The contractor shall insert the following DBE policy requirements in each of its subcontracts and shall insert a clause requiring its subcontractors to include these same requirements in any lower tier subcontracts that the subcontractors may enter into, together with a clause requiring the inclusion of the DBE policy requirements in any further subcontracts that may in turn be made:

"The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, sex, national origin, physical disability or veteran status 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 contractor deems appropriate."

This DBE policy must be included in all subcontracts, and

shall not be incorporated by reference.

- (e) VAOB Annual DBE Goal: VAOB sets an overall annual goal for DBE participation on federally funded contracts, that is reviewed and revised each year, in accordance with the requirements of 49 CFR Section 26.45. For the specification of the overall annual DBE goal and an explanation of goal-setting methodology, contractors are directed to the VAOB DBE webpage at <http://www.aot.state.vt.us/CivilRights/DBE.htm>.

202.06 CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY. During performance of the contract, the contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, ancestry, sex, creed, sexual orientation, national origin, physical or mental condition, disability or place of birth.

The contractor shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, and Executive Order 11246 as amended by Executive Order 11375. The contractor shall also comply with the rules, regulations and relevant orders of the Secretary of Labor, Nondiscrimination regulations 49 CFR Part 21 through Appendix C. Accordingly, all subcontracts shall include reference to the above.

The contractor shall comply with all the requirements of Title 21, V.S.A., Chapter 5, Subchapter 6, relating to fair employment practices to the extent applicable. A similar provision shall be included in any and all subcontracts.

202.07 ENVIRONMENTAL REGULATIONS. Any contract in excess of one hundred thousand dollars (\$100,000.00) shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. Part 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. Part 1368), Executive Order 11738, and Environmental Protection Agency regulation (40 CFR Part 15), that prohibit the use, under non-exempt federal contracts, grants or loans, of facilities included on the EPA list of Violating Facilities. The provisions require reporting of violations to the grantor, Agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

In the event of conflict between these environmental requirements and pollution control laws, rules, or regulations of other federal, state, or local agencies, the more restrictive laws, rules, or regulations shall apply.

202.08 FALSE STATEMENTS. 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 (see 18 U.S.C. 1020.)

202.09 PROMPT PAYMENT. The contractor, by accepting and signing the contract, agrees to 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. This will apply whether or not the contract falls under the literal provisions of 9 V.S.A. Chapter 102.

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.

In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary contract, payments shall be made within 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. Failure to comply constitutes violation of this contract.

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 Agency's 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.

This section shall be included in the prime contractor's contract made with all of its subcontractors.

SECTION 203 - CONTRACT PROVISIONS

203.01 ADMINISTRATION REQUIREMENTS. By signing the contract the

contractor agrees to comply with the following provisions and certifies that the contractor is in compliance with the provisions of 49 CFR Part 18.36 - Procurement, (i) - Contract Provisions, with principal reference to the following:

- (a) STATE'S OPTION TO TERMINATE. The contract may be terminated in accordance with the following provisions:
- (1) Breach of Contract: Administrative remedies - the State may terminate the contract for breach of contract. Termination for breach of contract will be without further compensation to the contractor.
 - (2) Termination for Cause: Upon written notice to the contractor, the State may terminate the contract, as of the date specified in the written notice by the State, if the contractor fails to complete the designated work to the satisfaction of the State within the time schedule agreed upon. The contractor shall be compensated on the basis of the work performed and accepted by the State at the date of termination.
 - (3) Termination for Convenience: The State may, at any time prior to completion of services specified under the contract, terminate the contract by submitting written notice to a contractor fifteen (15) days prior to the effective date, via certified or registered mail, of its intention to do so.

When a contract is terminated for the State's convenience, payment to the contractor will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made.

When the State terminates the contract for its convenience, the State shall make an equitable adjustment of the contract price, but in doing so shall include no payment or other consideration for anticipated profit on unperformed services.

However, if a notice of termination for convenience is given to a contractor prior to completion of twenty (20) percent of the services provided for in the contract (as set forth in the approved Work Schedule and Progress Report) the contractor will be reimbursed for that portion of any reasonable and necessary expenses incurred to the date of the notice of termination that are in excess of the amount earned under the approved fees to the date

of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the State's approval.

The contractor shall make no claim for additional compensation against the State by reason of such termination.

- (4) Lack of Funding: If postponement, suspension, abandonment, or termination is ordered by the State because it lacks sufficient funding to complete or proceed with the project, the contractor may not make a claim against the State in any form or forum for loss of anticipated profit.
- (b) Proprietary Rights: If a patentable discovery or invention results from work performed under the contract, all rights accruing from such discovery or invention shall be the sole property of the contractor. The State and the United States Government shall have an irrevocable, nonexclusive, non-transferable, and royalty free license to practice 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.
- (c) Publications: All data, EDM, 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, EDM, 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.
- (d) Ownership of the Work: All studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM, photographs, and other material prepared or collected by the contractors, hereafter referred to as "instruments of professional service," shall become the property of the State as they are prepared and/or developed during performance of the work of 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 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.

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.

- (e) Rights and Remedies Additional: The rights and remedies of the State under this Section 203.01 are in addition to any other rights and remedies that the State may possess by law or under this contract.
- (f) Decisions Final and Binding: Decisions of the State on matters discussed in this Section 203.01 shall be final and binding.

203.02 PERSONNEL REQUIREMENTS AND CONDITIONS. The contractor shall employ only qualified personnel to supervise and perform the work. The State shall have the right to approve or disapprove key personnel assigned to administer activities related to the contract.

The contractor shall supply resumes for staff proposed to work on assignment and/or under retainer contracts for State review and acceptance or rejection. This requirement may be waived if the proposed staff has worked on similar projects for the State in the past. The State retains the right to interview the proposed staff.

Except with the approval of the State, during the life of the contract, the contractor shall not employ:

- (a) Personnel on the payroll of the State who are directly involved with the awarding, administration, monitoring, or performance of the contract or any project that is the subject of the contract.
- (b) Any person so involved within one (1) year of termination of employment with the State.

The contractor warrants that no company or person has been employed or retained, other than a bonafide employee working solely for the contractor, to solicit or secure the contract, and that no company or person has been paid or has a contract with the contractor to be paid, other than a bonafide employee working solely for the contractor, any fee, commission, percentage, brokerage fee, gift,

or any other consideration, contingent upon or resulting from the award or making of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, without liability to the State, and to retrieve all costs incurred by the State in the performance of the contract.

The State reserves the right to require removal of any person employed by a contractor from work related to the contract for misconduct, incompetence, or negligence, or who neglects or refuses to comply with the requirements of the contract. The decision of the State, in the due and proper performance of its duties, shall be final and not subject to challenge or appeal beyond the appropriate division Director.

203.03 CONFLICT OF INTEREST. A contractor performing services for the Agency of Transportation in connection with a project shall not have, directly or indirectly, a financial or other personal interest, other than the contractor's employment or retention by the Agency of Transportation in any contract or subcontract in connection with such project. No officer or employee of such a contractor retained by the Agency of Transportation shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the Agency of Transportation, and such officer, employee or person has not participated in such acquisition for and in behalf of the Agency of Transportation.

203.04 ASSIGNMENTS, TRANSFERS AND SUBLETTING. The contractor shall not assign, sublet, or transfer any interest in the work covered by the contract without 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 prior written consent of the State. The approval or consent to assign, sublet or assign any portion of the work shall in no way relieve the contractor of responsibility for the performance of 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.

Any authorized subcontracts shall contain all of the same provisions specified for and attached to the original contract with the State.

203.05 PERFORMANCE AND COMPLETION OF WORK. 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.

With the exception of 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.

If, at any time during or after performance of the contract, the contractor discovers any design errors, change(s) in standards, work product, or other issues that warrant change(s), the contractor shall notify the Project Manager immediately. This paragraph also applies to those projects that are under construction or have been constructed.

203.06 CONTINUING OBLIGATIONS. The contractor agrees that if, because of death(s) 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) and/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.

203.07 APPEARANCES.

- (a) 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 and defend its services provided under the contract.

The contractor shall perform any liaison that the State deems 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.

The contractor further agrees to participate in meetings with the State, applicable Federal Agencies, and 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.

- (b) Appearance as Witness: If and when required by the Agency, 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.

203.08 CHANGES AND AMENDMENTS. Extra work, additional services or changes may necessitate the need to amend the contract. Extra work, additional services or changes must be properly documented and approved by the Agency's Secretary of Transportation, or an authorized official delegated this responsibility, prior to initiating action of any extra work, additional services, or changes.

203.09 APPENDICES. The State may attach to these specifications appendices containing various forms and typical sample sheets for guidance and assistance to the contractor in the performance of the work. It is understood, however, that such forms and samples may be modified, altered, and augmented from time to time by the State. It is the responsibility of the contractor to ensure that it has the latest versions applicable to the contract.

203.10 EXTENSION OF TIME. The contractor agrees to perform the work in a diligent and timely manner; no charges or claims for damages shall be made by the contractor for delays or hindrances from any cause whatsoever. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the State may decide. Time extensions may be granted only by amendment, and only for excusable delays such as delays beyond the control of the contractor and without the fault or negligence of the contractor.

The contractor may, with justification, request in writing an extension of the allotted time for completion of the work. A request for extension will be evaluated, and if the State 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.

The decision of the State relative to granting an extension of time shall be final and binding.

203.11 RESOLUTION OF CONTRACT DISPUTES. The parties shall attempt to resolve any disputes that may arise under the contract by negotiation. Any dispute not resolved by negotiation shall be referred to the appropriate Director for determination. If the contractor is aggrieved by the decision of the Director, the contractor may appeal in writing to the Transportation Board, through the Director, within 30 calendar days of the Director's decision, but not thereafter. The notice of appeal shall completely outline the nature and extent of the issue(s) appealed and shall include copies of any and all supporting documentation. The decision of the Transportation Board may be appealed to Vermont

Superior Court by either party as provided in 19 V.S.A. 5c.

203.12 EXCUSABLE FAILURE TO COMPLY WITH TIME SCHEDULE. 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. In the event that any such causes for delay are of such magnitude as to prevent the complete performance of the contract within two (2) years of the originally scheduled completion date, either party may by written notice request an extension of time or terminate the contract.

203.13 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.

203.14 NON-HOSTILE-ACT CLAUSE. 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 of Vermont or any of its agencies or instrumentalities in a matter, proceeding, or lawsuit substantially 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.

SECTION 204 - OPERATIONAL STANDARDS

204.01 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.

204.02 WORK SCHEDULE AND PROGRESS REPORTS. Prior to initiating any work, the contractor shall work with the Agency's 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 date(s) in the contract. The State will use this work schedule to monitor the contractor.

The contractor during the life of the contract shall make monthly progress reports, or as determined by the Project Manager, 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. The State 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 the State.

204.03 UTILITIES. Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by proposed construction, the design contractor shall consult with the Agency's Utility Section and initiate contacts and/or discussions with the affected owner(s) 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.

204.04 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 need to enter upon private property to accomplish the work under the contract, the contractor shall inform property owners and/or 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 owner 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.

204.05 INSPECTION OF WORK. 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. The contractor shall permit the State, or representative(s) of the State, 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.

A conference, visit to a site, or inspection of the work may be held at the request of the contractor, State, and appropriate federal agency(ies).

204.06 WRITTEN DELIVERABLES/REPORTS. Unless otherwise identified in the SOW, written deliverables presented under terms of the

contract shall be on 8.5" by 11" paper, consecutively printed on both sides. Reports shall be bound and have a title page that identifies the name and number of the project, if applicable, and publication date. The report shall have a table of contents and each page shall be numbered consecutively. Draft reports shall be clearly identified as such.

SECTION 205 - PROJECT DEVELOPMENT AND STANDARDS

205.01 PLANS, RECORDS AND AVAILABLE DATA. At the request of the contractor, the State will make available to the contractor, at no charge, all information and data related to the contract.

205.02 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.

205.03 ELECTRONIC DATA MEDIA. Contractors, subcontractors, and representative(s) thereof performing work related to the contract shall ensure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage.

(a) CADD Requirements:

CADD requirements are available in "The Vermont Agency of Transportation CADD Standards and Procedures Manual" on the VTrans web page at <http://www.aot.state.vt.us>. VTrans has developed this manual to ensure that all electronic CADD files delivered to and taken from the Agency are in formats that can be utilized for engineering purposes without modification. VTrans will not accept or pay for any CADD files which do not adhere to the requirements specified in the CADD manual.

(b) 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 being 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. VTrans is not responsible in any way for

costs or other consequences, whether direct or indirect, that may occur to the contractor or any subsequent users of the information due to errors that may or may not be detected.

(c) Geographic Information System Requirements.

The contractor shall provide to the State all spatially-referenced digital data developed for or used in a project. Such data shall conform to relevant standards and guidelines of the Vermont Geographic Information System with respect to digital media, data format, documentation, and in all other respects. Copies of the standards and guidelines can be obtained from the Vermont Center for Geographic Information, Inc., 58 South Main Street Suite 2, Waterbury, VT 05676; (802) 882-3000 or at <http://www.VCGI.org>.

(d) Data Specifications.

- (1) Data structures (databases, data files, and other electronic information) shall provide 4-digit date century recognition. Example: 2016 provides "date century recognition," while '16 does not.
- (2) All stored data shall contain date century recognition, including, but not limited to, data stored in databases and hardware/device internal system dates.
- (3) Calculations and program logic shall accommodate both same century and multi-century formulas and data values. Calculations and program logic includes, but are not limited to, sort algorithms, calendar generations, event recognition, and all processing actions that use or produce data values.
- (4) Interfaces to and from other systems or organizations shall prevent non-compliant dates and data from entering or exiting any State system.
- (5) User interfaces (*i.e.*, screens, reports, and similar items) shall accurately show 4-digit years.

(e) General Specifications.

VTrans has standardized on Microsoft Office Desktop Suite. To provide uniform and consistent integration with electronic data transfer, all data, other than specific applications previously mentioned, shall be in Microsoft's Office format. The desktop suite includes word processing, spread sheets and presentations. All

transmissions of e-mail must be in Rich Text (RTF) or Hyper Text Markup Language (HTML) format.

205.04 REVIEWS AND APPROVALS. All work prepared by the contractor, subcontractor(s), 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 entity 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.

SECTION 206 - PAYMENT FOR SERVICES RENDERED

206.01 PAYMENT PROCEDURES. The State will pay the contractor, or the contractor's legal representative, progress payments monthly or as otherwise specified in the contract.

- (a) General: Payment generally will be determined by the percentage of work completed as documented by a progress report of such work. The total percentage of work billed shall be within ten (10) percent of the total percentage of work completed. The percentage of work completed is based on the actual contract work produced, as outlined in the monthly progress report.
- (b) Hourly-Type Contracts: For hourly type contracts, payments will be made based on documented hours worked and direct expenses encumbered.
- (c) Actual Costs and Fixed Fees: When applicable for the type of payment specified in the contract, the progress report shall summarize actual costs and any earned portion of a fixed fee.
- (d) Maximum Limiting Amount Cannot Be Exceeded: The total amount invoiced for the contract and the total amount paid pursuant to the contract cannot exceed the contract's Maximum Limiting Amount.
- (e) Invoices: Invoices shall be submitted to the Agency's Project Manager. The invoice must adhere to all terms of the contract. The "final invoice" shall be so labeled. All invoices must:

- 1) Be originals signed by a company official and be accompanied by three copies, with documentation for the original and all copies.
 - 2) Indicate the appropriate project name, project number if applicable, and contract number. When applicable, invoices shall further be broken down in detail between projects.
 - 3) Be dated and list the period of performance for which payment is requested.
 - 4) Include a breakdown of direct labor hours by classification of labor, phases and tasks, if applicable. For reporting purposes, however, the amounts can be combined for phases that are paid from the same funding source.
 - 5) Not include overtime rates unless the Agency's contract or Project Manager provides prior written approval, if applicable. Information regarding overtime can be found in 48 CFR Ch. 1, Section 22.103.
 - 6) Be accompanied by documentation to substantiate necessary charges. Documentation of all charges must accompany the original invoice and each copy.
- (f) Meals and Travel Expenses: When applicable for the type of payment specified in the contract, reimbursement of expenses for meals and travel shall be limited to the current, approved in-state rates as determined by the State's non-management bargaining unit labor contract, and need not be receipted. Current in-state rates may be obtained from the Agency's Contract Administration Section.
- (g) Other Expenses: Expenses for the following items will be reimbursed at reasonable rates as determined by the Agency. In all instances, receipts or bills indicating costs pertaining to the project identified, inclusive of any discounts given to the contractor, must be submitted.
1. Lodging.
 2. Telephone and fax.
 3. Printing and reproduction.
For printing and reproduction work performed within the contractor's firm, log sheets are sufficient if they clearly indicate the contract or project copies.

4. Postage and shipping.
Contractor shall choose the most economical type of service (regular mail, overnight express, other) workable for the situation. The use of express mail or overnight delivery should be limited to those instances when such expenditures are warranted.

Reimbursement of all other expenses is subject to approval by the State and all other reimbursement requests must include receipts or other documentation to substantiate the expenses. Except as otherwise provided in the contract, all requests for reimbursement of direct expenses must reflect actual costs inclusive of any discounts given to the contractor.

The contractor must attach any subcontractor invoices, ensure that they adhere to the terms of the contract, and include all necessary receipts and other documentation.

- (h) Payment Is Not Acceptance: Approval given or payment made under the contract shall not be conclusive evidence of the performance of said contract, either wholly or in part. Payment shall not be construed to be acceptance of defective work or improper materials.
- (i) Payment for Adjusted Work: As adjustments are required for additions, deletions, or changes to the contract, payment for such work shall be in accordance with Subsection 206.02 - Payment for Additions, Deletions or Changes and/or any applicable fees set forth in amendment(s) to the contract.
- (j) If the contractor discovers error in a submitted invoice or payment, the contractor shall notify the Project Manager of the error prior to the submission of any additional invoices. The Project Manager will provide direction on how the error is to be resolved.

206.02 PAYMENT FOR ADDITIONS, DELETIONS OR CHANGES. The State may, upon written notice, require changes, additions or deletions to the work/contract. Whenever possible, any such adjustments shall be administered under the appropriate fee established in the contract based on the adjusted quantity of work.

The State may, upon written notice, and without invalidating the contract, require changes resulting from revision or abandonment of work already satisfactorily performed by the contractor or changes in the SOW.

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 and/or expense to perform the work, the contract may be amended accordingly.

The contractor agrees to maintain complete and accurate records, in a form satisfactory to the Agency, for any extra work or additional services in accordance with Subsection 204.05 - Inspection of Work. When extra work or additional services are ordered, 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 the State.

SECTION 207 - AUDIT REQUIREMENTS

207.01 AUDIT REQUIREMENTS.

Contracts of Two Hundred Fifty Thousand Dollars (\$250,000.00) and Over:

The contractor shall furnish the Agency 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.

Contracts Under Two Hundred Fifty Thousand Dollars (\$250,000.00):

The contractor may submit internally generated indirect cost computations and the related schedules.

Additional information may be requested from a new contractor executing a contract under \$250,000.00 or in some cases from contractors with existing or previous contracts with the Agency if any of the following conditions or areas of concern exist:

- There is insufficient knowledge of the consultant's accounting system.
- There is previous unfavorable experience regarding the reliability of the consultant's accounting system
- The contract involves procurement of new equipment or supplies for which cost experience is lacking.
- There have been issues with adherence to Federal and State regulations and policies.
- Capacity - ensuring ongoing delivery

SECTION 208 - SECRETARY OF STATE

208.01 REGISTRATION WITH SECRETARY OF STATE. 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 (are) a non-resident individual(s) doing business in Vermont in his/her (their) individual capacity(ies).
- (d) Is doing business in Vermont under any name other than the Contractor's own personal name.

This registration must be complete prior to contract preparation.

APPENDIX A

**STATE OF VERMONT
STANDARD CONTRACT
FOR PERSONAL
SERVICES**

STATE OF VERMONT Contract # _____

STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, _____ (hereafter called "State"), and _____, with _____ principal place of business in _____, (hereafter called "Contractor"). Contractor's form of business organization is _____. It is the contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is services generally on the subject of _____. Detailed services to be provided by the contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$_____.00.
4. **Contract Term.** The period of contractor's performance shall begin on _____, 20__ and end on _____, 20__.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.
 - Approval by the Attorney General's Office /is/is not/ required.
 - Approval by the Secretary of Administration /is/is not/ required.
 - Approval by the CIO/Commissioner DII /is/is not/ required.

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

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

8. **Attachments.** This contract consists of ___ pages including the following attachments which are incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions

Attachment C – “Standard State Contract Provisions,” a preprinted form (revision date 12/08/08), except that the following numbered paragraphs are not included:

_____.

Attachment D - Other Provisions

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

By the State of Vermont:

Date: _____

Signature: _____

Name: _____

Agency: _____

By the Contractor:

Date: _____

Signature: _____

Name: _____

Title: _____

APPENDIX B

STATE OF VERMONT CUSTOMARY STATE CONTRACT PROVISIONS

State of Vermont – Attachment C_12/08/08

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

- 1. 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.
- 2. Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
- 3. 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.
- 4. Appropriations:** 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.
- 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, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.
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. 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.
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.
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.

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

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, 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 Per Occurrence

\$1,000,000 General Aggregate

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

\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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

9. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

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

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at:

<http://finance.vermont.gov/forms>

10. Records Available for Audit: The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter 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. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 21V.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 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. 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.

13. Taxes Due to the State:

a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

a. is not under any obligation to pay child support; or

b. is under such an obligation and is in good standing with respect to that obligation; or

c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of his

Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include all subcontract or subgrant agreements and a tax certification in accordance with paragraph 13 above.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing 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.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. 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.

(End of Standard Provisions)