

STATE OF VERMONT GRANT AGREEMENT

Part 1-Grant Award Detail

SECTION I - GENERAL GRANT INFORMATION

¹ Grant #: EPA-PC-401		² Original <input checked="" type="checkbox"/>		Amendment # <input type="checkbox"/>	
³ Grant Title: Engineering Planning Advance - Grafton					
⁴ Amount Previously Awarded: \$0.00		⁵ Amount Awarded This Action: \$92,500.00		⁶ Total Award Amount: \$92,500.00	
⁷ Award Start Date: upon signing		⁸ Award End Date:		⁹ Subrecipient Award: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
¹⁰ Vendor #: 0000040633		¹¹ Grantee Name: Town of Grafton			
¹² Grantee Address: PO Box 180					
¹³ City: Grafton		¹⁴ State: VT		¹⁵ Zip Code: 05146	
¹⁶ State Granting Agency: Department of Environmental Conservation				¹⁷ Business Unit: 06140	
¹⁸ Performance Measures: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		¹⁹ Match/In-Kind: Description:			
²⁰ If this action is an amendment, the following is amended: Amount: <input type="checkbox"/> Funding Allocation: <input type="checkbox"/> Performance Period: <input type="checkbox"/> Scope of Work: <input type="checkbox"/> Other: <input type="checkbox"/>					

SECTION II - SUBRECIPIENT AWARD INFORMATION

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

SECTION III - FUNDING ALLOCATION

STATE FUNDS				
Fund Type	²⁷ Awarded Previously	²⁸ Award This Action	²⁹ Cumulative Award	³⁰ Special & Other Fund Descriptions
General Fund			\$0.00	
Special Fund			\$0.00	
Global Commitment (non-subrecipient funds)			\$0.00	
Other State Funds		\$92,500.00	\$92,500.00	capital funds

FEDERAL FUNDS

(includes subrecipient Global Commitment funds)

Required Federal Award Information

³¹ CFDA#	³² Program Title	³³ Awarded Previously	³⁴ Award This Action	³⁵ Cumulative Award	³⁶ FAIN	³⁷ Fed Award Date	³⁸ Total Federal Award
				\$0.00			
³⁹ Federal Awarding Agency:		⁴⁰ Federal Award Project Descr:					
				\$0.00			
Federal Awarding Agency:		Federal Award Project Descr:					
				\$0.00			
Federal Awarding Agency:		Federal Award Project Descr:					
				\$0.00			
Federal Awarding Agency:		Federal Award Project Descr:					
				\$0.00			
Federal Awarding Agency:		Federal Award Project Descr:					
Total Awarded - All Funds		\$0.00	\$92,500.00	\$92,500.00			

SECTION IV - CONTACT INFORMATION

⁴¹ STATE GRANTING AGENCY		⁴² GRANTEE	
NAME: Renee Miller		NAME: William Kearns	
TITLE: Grants Management Specialist		TITLE: Town Administrator	
PHONE: (802) 279-5281		PHONE: (802) 843-2552	
EMAIL: renee.miller@vermont.gov		EMAIL: townadmin@grafftonvt.org	



ENGINEERING PLANNING ADVANCE AGREEMENT

1. Parties: This is an Engineering Planning Advance Agreement between the State of Vermont, Department of Environmental Conservation (hereinafter called “State”), and the Town of Grafton, with a principal place of business at PO Box 180, Grafton, VT 05146 (hereinafter called “Recipient”). It is the Recipient’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Recipient is required to have a Vermont Department of Taxes Business Account Number.
2. Subject Matter: The subject matter of this Engineering Planning Advance Agreement is for services generally on the subject of preliminary engineering services. The detailed scope to be provided by the Recipient is listed in Attachment A, Scope of Work to be Performed.
3. Maximum Amount: In consideration of the scope of work, the State agrees to pay Recipient, in accordance with the payment provisions specified in Attachment B, Payment Provisions, a sum not to exceed \$92,500. This award cannot be used as match for the purpose of obtaining additional federal funds by the Recipient without written approval from the State.
4. Repayment: The Recipient hereby agrees that should State funds be advanced as specified in Attachment B, that said funds will be repaid as follows:
 - a. If construction of this project is funded by the Clean Water State Revolving Fund or by a Vermont Pollution Control Grant, the first repayment(s) by the Recipient shall be credited first towards the repayment of this Planning Advance; or,
 - b. If construction of this project is funded by any other source, Recipient shall, within sixty (60) days of receiving the non-State Revolving Fund funding, repay the entire Planning Advance.
5. Procurement: The Recipient certifies that for any equipment, supplies, and/or services outside of their organization, that they have and will follow their procurement policy.
6. Ownership and Disposition of Equipment: Any equipment purchased or furnished to the Recipient by the State under this Planning Advance Agreement may not be transferred, sold, or otherwise disposed of without written permission from the State. A change in the intended use of the equipment must also be approved by the State. If the use for any equipment is changed, if equipment is sold, transferred, or otherwise disposed of, the Recipient shall pay the State the estimated current market value of the equipment. Recipients shall submit requests to the State under this paragraph in writing, and include: the description of equipment, date of purchase, original cost and estimated current market value.
7. Source of Funds: State funds
8. Grant Term: The period of Recipient’s performance shall begin on April 18, 2022 and end on April 18, 2024.
9. Amendment: No changes, modifications, or amendments in the terms and conditions of this Planning Advance Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Recipient. No amendment will be considered without a detailed justification to support the amendment request. Failure to provide an adequate justification may result in the denial of the request. Any request for an amendment to this agreement must be made in writing at least thirty (30) days prior to the end date of this agreement or the request may be denied.
10. Cancellation: This Engineering Planning Advance Agreement may be cancelled by either party by giving written notice at least 30 days in advance.

- 11. Work product ownership: All data and materials created or collected under this Agreement – including all digital data – are public records. The parties may utilize the information for their own purposes, but shall not copyright these materials.”
- 12. Attachments: This Engineering Planning Advance Agreements consists of the following attachments that are incorporated herein:
 - Attachment A - Scope of Work to be Performed
 - Attachment B – Budget and Payment Provisions
 - Attachment C - Customary State Provisions
 - Attachment D – Other Provisions

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

STATE OF VERMONT

By: DocuSigned by:

John Beling
FC103A7A103A466...

Commissioner

Dept of Environmental Conservation

Date: 4/26/2022

GRANTEE

By: DocuSigned by:

Bill Kearns
04FA427C92E8408...

Name: (Print) Bill Kearns

Title: Town Administrator

Date: 4/26/2022

^{DS}
DP

Attachment A

Scope of Work to be Performed

Part or All of the Scope May be Subcontracted with Written Prior Approval from the State

This Engineering Planning Advance Agreement funds the project identified below:

- 1) Project Description: The community will investigate wastewater problems, and the feasibility of solutions to those problems, for the following reasons:
- To determine the feasibility of a smaller-scale community wastewater system serving the footprint of the “high priority” lots in the Village including those considered high risk based on the presence of shallow drinking water wells, specific soil types, and aging septic systems.
 - The Preliminary Engineering Report (PER) will investigate potential wastewater service areas, treatment/disposal locations, collection system style and potential use of innovation/alternative treatment technologies.
 - Provide updated opinion of project costs and address regulatory feedback for a potential decentralized wastewater system(s) that meet the needs of the Village.

2) Engineering Planning Advance Findings:

- The Project is in conformance with the provisions of Title 24 V.S.A., Chapter 120, §4764(a) and §4766(a).
- The cost of the project is reasonable for its intended purpose, per Title 24 V.S.A., Chapter 120, §4766(b)(1).
- Local funds are not readily available for planning, in conformance with Title 24 V.S.A., Chapter 120, §4766(b)(2).
- The Commissioner of DEC has approved this use of funds for this project.
- The project qualifies for an engineering planning advance of \$92,500 under Title 24, V.S.A., Chapter 120, § 4764(a).

3) Funding Source:

a. 6140992106:	\$92,500
Total:	\$92,500

- 4) Payment Provisions: Recipient shall submit payment requests no more frequently than monthly for eligible project costs, consistent with project eligibility determinations, as described in Attachment B.

Performance Measure	Deliverable	Due Date	Proposed Payment
#1. The Subrecipient will: Identify the project need, establish a proposed service area, and identify environmental constraints.	30% Preliminary Engineering Report & 30% Project Meeting & Minutes	July 1, 2022	\$27,700
#2. The Subrecipient will: Evaluate proposed alternatives and establish preliminary cost estimates, compare alternatives, have a public meeting, then formally select the preferred project.	60% Preliminary Engineering Report & 60% Project Public Meeting & Minutes	Sept 16, 2022	\$18,400
#3 The Subrecipient will: Perform additional analysis on the proposed project, propose funding sources, and examine the project funding option and the Subrecipient will: Complete and submit the final Preliminary Engineering report, revising to include state and local comments.	90% Preliminary Engineering Report & 90% Project Meeting & Minutes Final Preliminary Engineering Report & Project Meeting & Minutes	Sept 30, 2022	\$9,500
#4 The Subrecipient will: Complete and submit the draft and final Environmental Information Document, revising to include state and local comments.	Draft EID Final EID	Oct 21, 2022	\$24,800
#5 The Subrecipient will: Complete and submit the outreach plan and any developed outreach documents	Outreach Memo (Plan); Outreach Documents	Sept 30, 2022	\$12,100
Total			\$92,500

Attachment B

Payment Provisions

Payment Schedule

This Engineering Planning Advance is a cost-reimbursable award. Payments made to the recipient by the State are based on the submittal of a payment request. Recipients are required to keep documentation of all expenses reported to the State on the invoice. The State reserves the right to ask for expense documentation upon request.

The Recipient will meet with a State engineer to present work summaries at 30% work completion, 60% work completion, and 90% work completion, or as otherwise directed by the State engineer. Disbursements will not be made without each required meeting and disbursements above 90% of the loan amount will not be made until the final documents have been received, reviewed, and approved by the State.

The State will measure sufficient progress by examining the performance required under the work plan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. The State may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

Risk-Based Assessment:

Risk Level: Moderate

Risk Level	Monitoring Requirements
Moderate	- Grantee is required to submit a biannual progress report(s). Progress report(s) must include: summary of progress made on deliverables within reporting timeframe, milestone status updates, technical /cost/ schedule issues encountered, and work planned for next period.

- These monitoring requirements are required deliverables even when not listed explicitly in the deliverables table in Attachment A.

The Grantee shall:

- Maintain a copy of all receipts on file for review upon request by the State,
- Include a copy of all receipts for costs requested for reimbursement.
- Other:

Other Provisions

- Up to 90 days of pre-award costs are allowable under this planning advance as determined by the State. Recipient shall submit payment requests no more frequently than monthly for eligible project costs.
- Failure to repay this Engineering Planning Advance within 60 days of the due date for repayment as prescribed herein, shall result in the assessment of interest at the rate of 12% per annum, as prescribed in 24 VSA Sec. 4768 (delete as appropriate, per paragraph 4).
- Grantee/Contractor is conferred blanket approval from the State to execute any subcontracts associated with this Agreement and related amendments. As part of the procurement process, the Grantee/Contractor must verify and document that none of its subgrantees/subcontractors are listed on the federal debarment list located at <https://sam.gov/content/home> or the State debarment list maintained by the Vermont Buildings and General Services (BGS) and located at: <https://bgs.vermont.gov/purchasing-contracting/debarment>. Both the name of the entity and name of the primary point of contact must be checked.

Upload all completed forms to: <https://anronline.vermont.gov/home>

Final Payment: Final payment will be paid upon receipt and satisfactory review of all deliverables, as described in the scope of work, a final financial report documenting expenditure of 100% of funds, and where appropriate, documentation of required match.

**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, Recipient 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, grant or engineering planning advance to which this form is attached.
- 2. Entire Agreement:** This Agreement, whether in the form of a contract, engineering planning advance, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.
After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.
The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.
Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Party or any third party.

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

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

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

Premises - Operations

Products and Completed Operations Personal

Injury Liability Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

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

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

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

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

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

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

required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

- 12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.
- 13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- 14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.
- 15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
- 16. Taxes Due to the State:**
- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
 - D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
- 17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.
- 18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:
- A. is not under any obligation to pay child support; or
 - B. is under such an obligation and is in good standing with respect to that obligation; or
 - C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

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

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

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

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

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

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

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

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

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

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

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

27. Termination:

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

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

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

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

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

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

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

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

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

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

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

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

32. Requirements Pertaining Only to State-Funded Grants:

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

(End of Standard Provisions)

Attachment D Other Provisions

1. All engineering work shall be completed in accordance with all applicable engineering codes and standards, including but not limited to all State rules and regulations.
2. The Recipient shall at all times comply with all applicable state requirements pertaining to the Project, including but not limited to requirements of Vermont's Historic Preservation law, Title 22, Chapter 14 of the Vermont Statutes Annotated.
3. The format of any consulting service agreements funded under this Engineering Planning Advance shall be approved by the State prior to its use and adoption.
4. The Recipient shall require that any engineers or engineering firms hired using the proceeds of this Engineering Planning Advance carry Professional Liability Insurance, with minimum coverage of \$1,000,000.00 per claim, and \$2,000,000.00 aggregate. Recipient shall provide proof of coverage, showing Recipient and the State listed as additional insured.
5. No changes to the Engineering Services Agreement between Recipient and the engineer or engineering firm, for the work that is funded under this Engineering Planning Advance shall be made, without the prior written approval of the State.