



State of Vermont
Department of Buildings & General Services

Government Business Services Division

VT Information Centers, Fleet Management,
Surplus Property, Postal & Print
134 State Street, Montpelier, VT 05633-2201

July 17, 2012

Jesse "Sam" F. Sammis, III
Green Mountain Center
2 Park Street
Randolph, VT 05060

Dear Sam,

Attached you will find the updated term-sheet reflecting changes to item #14 "Interstate and Highway Signage" and item #10 "Non-Competition Clause" made by the work group (changes highlighted in yellow). The document reflects only these two changes made to the document since your last edits on July 11, 2012.

Also, please be aware that the final Agreement will contain language required by Contract Administration and some changes BGS legal counsel may recommend to the language we have been using to reference the terms. At a minimum, the agreement will include those elements contained in Bulletin 3.5/Attachment C that are deemed necessary.

As you are aware, it was decided by the work group to seek approval for this agreement from the Joint Transportation Oversight Committee once the draft agreement terms and conditions have been agreed upon by both parties. The work group has agreed that time is of the essence in having this agreement reviewed by the Committee.

In the event you have any questions please feel free to contact me directly.

Sincerely,

Edward B. von Turkovich
Director
Government Business Services

Attachment
2012-07-17 Revised Term Sheet

cc: Michael J. Obuchowski, Commissioner, Buildings & General Services Department
Jeb Spaulding, Secretary, Agency of Administration
Brian R. Searles, Secretary, Agency of Transportation
Lawrence Miller, Secretary, Agency of Commerce & Community Development
Deborah Ferrell, Government Business Services
Jeffrey W. Lively, BGS General Counsel
John Dunleavy, VTrans General Counsel

**Agreement
Exit 4, Interstate 89, Randolph – Visitor Center**

TERM SHEET

1. Duration of the Agreement

Thirty (30) year base term, with five additional ten-year renewal options. (Jeff Lively to provide explanation of this policy to Mr. Sammis).

The Developer will be provided seven years from the signing of the agreement in which to obtain all necessary state and local permits to build the Visitors' Center and to begin offering services to the travelling public. In order to comply with this term requirement, the developer will demonstrate progress being made at key milestones in the project by supplying the State with the following documents as they are obtained. Failure to provide milestone documents in a timely fashion absent the written approval of both parties is basis for cancellation of this agreement.

- a. Evidence of filing of the Act 250 application provided to the State by: May 1, 2013
- b. Evidence of filing of all local permits required by: May 1, 2014
- c. Evidence of Act 250 approval including resolution of appeals by December 31, 2017
- d. Evidence of Local Permit approvals provided to the State by December 31, 2017
- e. Site plan in compliance with AASHTO guidelines provided to the State by: January 30, 2018
- f. Engineering and building plans for the visitor center portion of the building in compliance with AASHTO Guidelines provided to the State by January 30, 2018.
- g. Contractor selection identified by: April 2, 2018
- h. Construction ground breaking by: May 1, 2018
- i. Completion of Construction by March 1, 2019
- j. Opening date projected by: May 1, 2019

2. Parties to the Agreement

The operating agreement will be between the Developer and/or entities owned, created, or operated by the Developer and the State and will not be assignable or transferable without State approval, (not to be unreasonably denied).

3. The Operating Agreement/License

The operating agreement will define the license the Developer will be given by the State to operate a State-sanctioned visitor center.

4. State Will Not Participate in the Permit Process

The State has determined that it will not be a party to any permit application regarding this project; however, this will not precluded the Developer from disclosing this agreement after it has been executed.

5. Funding -- Moratorium on the Investment of Public Funds in Non-State Owned Rest Area Projects

The State has taken the position that at this time it will not invest public funds in any privately-owned and privately-operated State-sanctioned visitor centers.

6. Funding – Operation and/or Maintenance

No State funds shall be allocated for the operation or maintenance of the Visitors' Center, nor shall the State reimburse the Visitors' Center for any costs associated with the operation of the center.

7. Highway Improvement

The permit process will determine any highway improvements that your project will require.

8. State Participation In Highway Improvements

At the present, the State has no plans to improve the interchange at Exit 4 and will not be investing any public funds to improve the interchange in the immediate future. At the present, any improvements necessary due to the construction and operation of this project will be borne by the developer.

The State commits that VTrans will be as helpful as possible in ensuring that transportation improvements necessary to permit this project are completed, recognizing that the only funding currently identified will be from private non public sources. VTrans is allowing, speculatively, that programmatic funding, if approved by some future Congress, and applicable to this project, would be considered and that the agency be on alert for that.

Further, VTrans will be alert to the potential for separate but planned projects such as the paving project scheduled for Rt. 66 in 2014 that could be involved in accomplishing some of the objectives of transportation improvements necessary at the site. VTrans also agrees that it is difficult to speculate unless it is known what Act 250 actually requires and that local planners should be involved in the conversation."

9. Comments from VTRANS

9.a. Maintenance Outside State Highway Right-of-Way: VTrans will not be responsible for any maintenance outside the State right-of-way (i.e., VTrans will not plow, maintain lighting, landscaping, or anything else on Developer's private property).

9.b. Type of Intersection: VTrans to thoroughly consider all alternatives before decision is made on type of intersection. This refers to the VT Route 66/Access Drive intersection.

9.c. Exit 4 off ramps: If traffic impact study results in impacts to the off-ramps from a level of service or capacity standpoint, the Developer will be responsible for funding any necessary corrective action (e.g., ramp widening, ramp lengthening, ramp signalization, etc.)

9.d. Randolph Southbound Rest Area: If this visitor center is closed, VTrans will retain the use of that facility for Department of Motor Vehicles activities. Ownership of the building will be transferred to VTrans.

10. Non-Competition Clause

The State agrees not to build additional State owned and operated visitor centers along Interstate 89 between White River Junction and Burlington for a twenty year period. However, the State reserves the right to operate its existing visitor centers at Sharon and Williston North & South in conformance with FHWA guidelines, including the right to expand the sites as necessary.

The State stipulates that, with the exception of Exit 7 in Berlin, it will not enter into any new agreements to create new state-sanctioned visitor centers along the interstate

corridor on I89 between Burlington and White River Junction for a twenty year period commencing with the opening date of the Visitors' Center. The interstate corridor is defined as any facility located within one-half mile of the interstate exit. If the State chooses to sanction a visitor center at the Berlin exit, the facility in which the visitor center is located will not exceed 5000 square feet.

This agreement will not preclude the State from designating Ambassador status to businesses and attractions interested in participating in the Vermont Ambassador Program sponsored by the Agency of Commerce and Community Development's Department of Marketing and Tourism (VDTM). The INFO designation provided by VDTM will only be provided to participants in good standing with the program and only to those participants located off the interstate right-of-way on town roads or state highways.

11. Size of the Exit 4 Visitor Center

A 2500 square foot Visitors' Center will be acceptable to the State and deemed adequate to meet the needs of the traveling public, with the understanding that bathrooms are not included within that 2500 square feet. Design, materials and number of bathroom fixtures will be dictated utilizing the standards contained in the "Guide for Development of Rest Areas on Major Arterials and Freeways" issued by the American Association of State Highway and Transportation Officials (AASHTO).

12. Parking

The Visitors' Center shall maintain parking facilities for passenger vehicles, commercial trucks, buses, recreational, and other over-sized vehicles. Parking area will comply with standards identified by VTRANS, FHWA, and/or AASHTO.

13. Hours of Operation

The Visitors' Center must be open to the traveling public 365 days a year, for a minimum of 14 hours per day (7:00 AM to 9:00 PM). At the developer's discretion, the operating hours may be increased beyond 14 hours per day.

14. Interstate & Highway Signage

Signage announcing the "Visitors' Center and Vermont Products Showcase Center" is viewed as essential to this project. The State (VTRANS - ACCD) is reviewing State policies implementing the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) and, subject to requirements of the MUTCD, is committed to making whatever changes to State policies necessary to allow signage promoting both the Visitors' Center and the Vermont Products Showcase Center to be installed on the Interstate, both northbound and southbound.

The State will be responsible for the cost of installing and maintaining signage announcing the Visitors' Center and Vermont Products Showcase Center on the interstate.

The Developer's concern related to the use of the word "Vermont" in the name of the Showcase Center has been referred to the Agency of Commerce and Community Development (ACCD), to the Attorney General's Office through the BGS General Counsel to address under the question of origin. However, the Developer is encouraged to conduct research and take action including but not limited to registering those names he is considering for the use of his facility with the Vermont Secretary of State's Office, to ensure the name he selects is available for use.

It is agreed that the Vermont Product Showcase Center will limit promotion of products to those that are made in Vermont and to represent companies, attractions or institutions that are doing business or domiciled in Vermont.

15. Rest Rooms

The Developer must maintain and offer rest room facilities for both genders and people with disabilities. There must be no purchase necessary or cost to the visitor in conjunction with restroom usage.

The Developer must establish a custodial service plan that maintains the restrooms in accordance with the standards established by the State.

The number of rest room facilities will be determined by the anticipated traffic and the use of AASHTO standards. At a minimum, handicapped-accessible restrooms are required. A family restroom with changing station is strongly recommended.

16. Hospitality & Safety Break Coffee Program

The Center will participate in the State's Hospitality and Safety Break Coffee Program. The Developer's staff will maintain the coffee service (make coffee, etc.) The State will provide the supplies and collect any/all donations.

17. Pay telephone

The Center shall provide a pay telephone, accessible 24-hours per day. Emerging technology at some future date could replace the need for this pay telephone, as approved by the State.

18. Indoor/Outdoor Kiosk/Courtesy Phone/Brochures

The State reserves the right to request, at no cost to the State, indoor and outdoor space at the Visitors' Center for the VICD marketing program, electronic information kiosks, a courtesy phone, and/or other similar program needs. The installation cost and maintenance of these displays shall be the responsibility of the State.

18.a. Display Tourism Information

The Visitors' Center shall prominently display local, state, and federal tourism information.

18.b. Display Design; Information of Vermont or Immediate Region

The Visitors' Center shall allow space for the State to install professionally-designed information displays within the facility. The installation cost and maintenance of these displays shall be the responsibility of the State.

18.c. Brochure/Map/Panel Display Program

The Visitors' Center shall provide space for the display of State brochures, marketing panels and/or maps at no cost to the State. The Visitors' Center will provide storage space for information materials. The Visitors' Center in conjunction with the State will designate space that will be utilized by the State for display racks and/or advertising. The Visitors' Center will maintain the brochure display racks daily to keep them stocked. The State will assign a VICD employee to work with the Visitors' Center to coordinate/support the VICD Brochure Program. The Visitors' Center will work with the designated State liaison in order to comply with the expectations of the State's brochure program. This will include ordering and storing brochures and stocking the displays. The State shall provide kiosk and brochure racks.

It is understood that the State collects a fee for participation in this program. 80% of the brochure rack and panel space will be reserved for the State.

19. Non-Discrimination Policy

The Center shall not discriminate against any person. No person shall be excluded from participation in, or be denied the benefits of any service, or be subjected to discrimination because of race, color, nationality, religion, gender, age, sexual orientation, or disability.

20. Changes or Modifications to Agreement

No changes, modifications, or amendments in the terms and conditions of the final agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representatives of the State and Center.

21. Cancellation of Agreement

This agreement may not be cancelled without cause. A list of those causable defects will include:

- a. Failure to pass three routine inspections in consecutive rating periods regarding customer service and/or cleanliness.
- b. Abandonment of agreement due to bankruptcy or default. (Jeff Lively to add appropriate language.)
- c. Failure to adhere to language and policies adopted and agreed to by both parties in operating agreement.
- d. Failure to meet milestone documentation deadlines as outlined in Section 1 of this document.

22. Exclusive Easement

The State will receive an exclusive easement or similar instrument that will be recorded with the property deed allowing the State unimpeded access and exclusive use to the Visitors' Center in the event of a default, bankruptcy, foreclosure, or any other cause determined by the State that impedes the delivery of services to the travelling public. BGS Counsel will propose language to the Developer's attorney for their review before agreement is executed. (Jeff Lively to review this language.)

23. Default

In the event the Developer defaults on this Agreement and the State is forced to take possession of the premises, it will continue to be the responsibility of the Developer or his assigns to pay for the costs incurred by the State such as salaries of employees and any other services as determined by the State as necessary to keep the Visitors' Center operating as specified in the final agreement.

24. Right of First Refusal

The State reserves the right of first refusal in the event the properties on which the Visitors' Center and Vermont Products Showcase are located were to be offered for sale. The methodology for providing the State with this privilege will be the template provided by the Developer entitled "Right of First Refusal/Subsequent Right of First Refusal" and attached to this document.

25. Performance Bond

A Performance Bond of \$250,000 will be required of the Developer as part of this agreement. (It is estimated it will cost \$250,000 per year to operate a facility at this location.) The Performance Bond will be effective the date the Visitors' Center is opened.

26. Additional Conditions

At a minimum, those elements contained in Bulletin 3.5 and/or Attachment C as required will be considered standard conditions. (Attach Bulletin 3.5 and Attachment C)

The Developer understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, worker's compensation or other benefits or services available to State employees

The Developer/Visitors' Center will act in an independent capacity and not as officers or employees of the State.

The Developer/his assigns/Visitors' Center shall indemnify, defend and hold harmless the State and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of the Visitors' Center's acts and/or omissions in the performance of this agreement

27. Operational Terms/Conditions

- 27.a. Building Signage:** The logo of the State and words "Visitors' Center" and "Vermont Products Showcase Center" shall be prominently displayed in a manner approved by VICD on the exterior of the Visitors' Center and Vermont Products Showcase Center.
- 27.b. Maintenance – Clean Restrooms & Public Areas:** The Visitors' Center must adopt a daily janitorial schedule to monitor cleanliness of restrooms and public areas and perform cleaning and maintenance as needed. The Developer shall maintain attractively landscaped grounds, parking lots in good repair and building in professionally maintained condition
- 27.c. Employees -- Appearance/Training:** The Visitors' Center's personnel shall receive training in Vermont tourism under the guidelines developed and approved by the VICD Director and participate in on-going training programs. The Visitors' Center's staff shall have a positive and welcoming attitude. VICD shall assist and contribute resources for this training. The Visitors' Center will provide employees with the opportunity to receive the Ambassador Skills Training provided by VICD. There is no charge for the training; however, the Visitors' Center will be responsible for any associated payroll or travel expense. The Visitors' Center's employees will maintain a neat appearance and wear some type of uniform clothing mutually agreed upon by the Developer and the State.
- 27.d. Visitor Count:** The Visitors' Center shall maintain information including, but not limited to, statistics regarding the number of visitors to the Visitors' Center. VICD will require the Visitors' Center to report this visitor count information in daily operations reports to VICD.
- 27.e. State Liaison:** The Visitors' Center will cooperate with the State Liaison assigned to assist the Visitors' Center with training, customer service, quality control, and routine inspections.
- 27.f. Periodic Inspections & Penalties:** VICD will conduct periodic announced and/or unannounced inspections of the Visitors' Center. Failure to pass an inspection will result in an additional un-announced inspection. Failure to pass a second unannounced inspection in a year may result in the State exercising its right to have necessary work performed and charged back to the developer. Additionally, a history of chronic deficiencies (to be determined by the State) could also trigger the State to invoke its easement privilege and assume operational control of the Visitors' Center with all operational costs charged back to the developer.
- 27.g. Marketing:** The State will identify the Visitors' Center and Vermont Products Showcase Center on its VICD website, in the VICD brochure, and on marketing panels at all State owned and operated visitors' centers; these publications identify all state-sanctioned VICD locations.
- 27h Visitor Surveys:** The Visitors' Center will be required to participate in the routine collection of visitor services surveys.

- 27.i. **Conformance To Retail Sales Concerns:** It is agreed by the parties that the Vermont Product Showcase and Visitors' Center will comply with permit requirements governing retail sales.
- 27.j. It is agreed that the Developer will not have to provide more than three (3) employees during any hour of operation to operate the Visitors' Center and that staffing patterns and metrics determining staffing requirements will be the same as those used at State visitor centers with similar numbers of visitors.

It is understood that the agreements in this term sheet will be contained in the final agreement; however language may change and additional elements may be added.

All elements in this term sheet have been approved

By the Developer:

Jesse "Sam" F. Sammis, III

Date

By the State:

Michael J. Obuchowski, Commissioner
Department of Buildings & General Services

Date