



STATE OF VERMONT
JOINT FISCAL OFFICE

MEMORANDUM

To: Joint Fiscal Committee members
From: Daniel Dickerson, Fiscal Analyst *DWD*
Date: June 18, 2019
Subject: Grant Request – JFO #2966-2967

Enclosed please find two (2) items, which the Joint Fiscal Office has received from the Administration.

JFO #2966 – \$400,000 from the Northern Border Regional Commission (NBRC) to the VT Dept. of Economic Development. The Department will utilize the funding to hire an executive director for the NBRC. The position will serve as a state employee for two years after which time it would become an independent position housed within the NBRC. The Department will utilize a vacant exempt position for the Commission Director. While the funding for the position is coming from NBRC and is primarily federal, it is important to note that Vermont pays in approximately \$50,000 per year to cover the administrative costs of the Commission, so some part of what the State pays in will likely come back through this grant. There will be no additional cost to the State for this position aside from what the State already pays in. The NBRC includes Vermont, New Hampshire, Maine and New York, as well as the federal government. Most money flowing through the Commission is federal.

[JFO received 6/12/19]

JFO #2967 – \$150,000 from the VT Housing and Conservation Board (VHCB) to the VT Dept. of Fish & Wildlife. The Department will utilize the funding to aid in the acquisition of a 435.5 acre parcel of land, which would be added to the Les Newell Wildlife Management Area in Bridgewater. The total cost of the acquisition, including legal fees and survey work, is \$425,000. Most funding for the acquisition will come from federal Pittman-Robertson funds and this VHCB grant, while \$20,000 will come from the State Species Habitat and Conservation Fund, which is funded through the sale of habitat stamps and federal matching dollars. Upon purchasing the land, the Department will convey a conservation easement to VHCB. The Department is prepared to take on future PILOT payments and to erect/maintain signage on the land. No additional State funding would be needed at this time.

[JFO received 6/12/19]

Please review the enclosed materials and notify the Joint Fiscal Office (Daniel Dickerson at (802) 828-2472; ddickerson@leg.state.vt.us) if you have questions or would like an item held for legislative review. Unless we hear from you to the contrary by July 2, 2019 we will assume that you agree to consider as final the Governor's acceptance of these requests.

State of Vermont
 Department of Finance & Management
 109 State Street, Pavilion Building
 Montpelier, VT 05620-0401

[phone] 802-828-2376
 [fax] 802-828-2428

Agency of Administration
RECEIVED

 JUN 12 2019

JOINT FISCAL OFFICE

**STATE OF VERMONT
 FINANCE & MANAGEMENT GRANT REVIEW FORM**

Grant Summary:		To establish an independent office of the Northern Border Regional Commission (NBRC) through a reverse contract (NRBC hiring the State of Vermont).			
Date:		5/14/2019			
Department:		ACCD Dept. of Economic Development 7120010000			
Legal Title of Grant:		Northern Border Regional Commission			
Federal Catalog #:		n/a			
Grant/Donor Name and Address:		Northern Border Regional Commission, 58 Pleasant Street, Suite 1201, Concord NH 03301			
Grant Period:	From:	5/1/2019	To:	5/1/2021	
Grant/Donation		\$400,000			
	SFY 1	SFY 2	SFY 3	Total	Comments
Grant Amount:	\$21,201	\$200,000	\$178,799	\$400,000	
Position Information:		# Positions	Explanation/Comments		
		0	See attached memo approved by Sec. Young authorizing conversion of an exempt position transitioning to non-State status in 2021.		
Additional Comments:		No additional State funds required. This AA-1 is being submitted per advice from Steve Klein regarding this contract.			
Department of Finance & Management		<i>AME</i>		(Initial)	
Secretary of Administration		<i>BZ</i>		(Initial)	
Sent To Joint Fiscal Office		<i>6/10/19</i>		Date	

6/4/19



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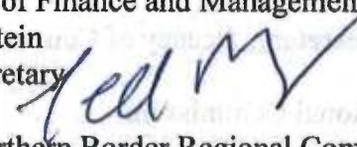
JUN 15 2019

JOINT FISCAL OFFICE

Agency of Commerce and Community Development
National Life Building – Davis Building, 6th Floor
One National Life Drive
Montpelier, VT 05620-0501
accd.vermont.gov

[phone] 802-828-3211
[fax] 802-828-3383

MEMO

To: Jason Aronowitz, Dept. of Finance and Management
Cc: Lisa Allard, Joan Goldstein
From: Ted Brady, Deputy Secretary 
Date: April 9, 2019
Re: Request to Expedite Northern Border Regional Commission AA-1

Governor Scott serves as the State Co-Chair to the Northern Border Regional Commission – a federally chartered economic development organization akin to the Appalachian Regional Commission. The Governor has provided the Commission with leadership and offered to host the Commission's first non-federal employee – its first executive director. The authorizing statute of the Commission specifies that this position must not be a federal employee. The State of Vermont will host this position, much like the State of Maryland hosted the first staff of the Appalachian Regional Commission and the State of Mississippi hosted the first staff of the Delta Regional Commission.

The authorizing statute dictates that the States of the Commission and the federal government must share the administrative costs of the Commission. This administrative fund will cover the costs of newly created executive director position at the Agency of Commerce. The Agency and the Commission have negotiated a draft reverse contract – one that provides the State of Vermont with funds to pay the executive director and cover expenses of the position. This reverse contract (the Commission is contracting the state to conduct business of the Commission) comes with up to \$400,000 over two years.

It is critically important that the State expedite approval of the AA-1 form / process that allows the Agency to enter into this reverse contract and accept the \$400,000. The Commission has made a contingent job offer to a candidate, and aims to onboard the candidate by July 1, 2019. This timing is critical, as the Commission's annual meeting occurs in late July and nearly \$20 million of grants are evaluated and awarded over the summer – a process the Commission is eager to have the new Executive Director participate in.





Department of Economic Development
Agency of Commerce and Community Development

To: Jason Aronowitz, Dept. of Finance and Management
CC: Lisa Allard, Joan Goldstein
From: Ted Brady, Deputy Secretary, Agency of Commerce and Community Development
Re: Northern Border Regional Commission
Date: January 18, 2019

Enclosed please find an AA-1 Form to receive funding of \$400,000 from the Northern Border Regional Commission.

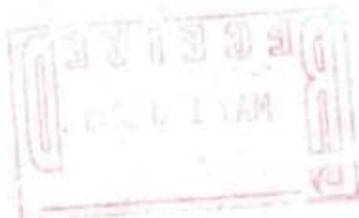
ACCD and the Department of Economic Development will host the Commission's first executive director starting in May 2019. This funding will be structured using a reverse contract between ACCD and the NBRC, will be used to fund the position for two years. At the end of the grant period, the position will transition out of state government into an independent organization.

I have enclosed the following:

- An AA-1
- A memo approving the creation of the new exempt Executive Director position from Secretary of Administration Susanne Young
- A draft contract agreement

Please let me know if you need any additional information.

Thank you.



VERMONT

Agency of Commerce and Community Development

Secretary's Office

1 National Life Drive, Davis Bldg, 6th Floor

Montpelier, VT 05620-0501

aced.vermont.gov

[phone] 802-622-4200

[fax] 802-828-3383

To: Susanne R. Young, Secretary of Administration

From: Ted Brady, Deputy Secretary 

Date: December 4, 2018

Subject: Convert Vermont Life Editor Exempt Position to Executive Director of Northern Border Regional Commission

Background: The Agency of Commerce and Community Development proposes repurposing the existing vacant Vermont Life Editor exempt position to hire an Executive Director of the Northern Border Regional Commission. The Agency does not intend to utilize the Editor position. The State of Vermont has been asked to host this inaugural position for the NBRC, an independent federal/state partnership funded by the federal government that will make more than \$4 million worth of community and economic development grants to the State of Vermont in 2019. The NBRC is required by statute to establish an independent body headed by a non-federal executive director. Under Governor Scott's leadership as State Cochair to the Commission, the other commissioners (Governor Cuomo, Governor Sununu, Governor LaPage, and Federal Co-Chair Harold Parker) have agreed to formally establish the commission in accordance with statute.

Though the position will be housed in Vermont, it is anticipated that the successful candidate could live anywhere in the Northern Border Regional Commission territory (NY, VT, NH or ME) and work remotely from across the region. I anticipate the position to be term limited to two years, with the expectation that the director will transition to non-state status in 2021.

Title: Executive Director with a working title of ED of the NBRC

Legislative Authorization: 3 V.S.A §311 (a) (3)

Position: 677028

Budget Impact: The position and support will be funded with Northern Border Regional Commission administrative dollars. Administrative functions of the commission are split between the four states and the federal government. The State of Vermont funds the administrative functions of the Commission at approximately \$50,000 a year, and is budgeted in FY19 and FY20. The position will have no general fund budget impact on the Agency, as these administrative costs are required by federal statute regardless of this action

Salary: Maximum of \$135,000

APPROVED


Secretary of Administration

Date

12/17/18



Northern Border Regional Commission

February 28, 2019

John W. Kessler

General Counsel

Agency of Commerce and Community Development

National Life Bldg., 6th Floor

Montpelier, VT 05620

RE: Executive Director of Northern Border Regional Commission

Northern Border Regional Commission (NBRC) is seeking the assistance of the State of Vermont to recruit, hire and supervise an NBRC executive director for two year. Expenses incurred through to engage the State of Vermont will be governed by a contract between NBRC and the State through which NBRC will pay VEMRONT/ACCD for the executive director's services and related expenses.

Harold B. Parker
Federal Co-Chair

STATE OF VERMONT REQUEST FOR GRANT (*) ACCEPTANCE (Form AA-1)

BASIC GRANT INFORMATION

1. Agency:	Agency of Commerce and Community Development		
2. Department:	Department of Economic Development		
3. Program:	Northern Border Regional Commission		
4. Legal Title of Grant:	Northern Border Regional Commission		
5. Federal Catalog #:	N/A		
6. Grant/Donor Name and Address:	Northern Border Regional Commission 58 Pleasant Street Suite 1201 Concord, NH 0881 03301 -A		

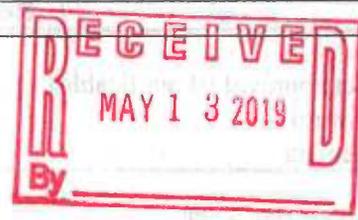
7. Grant Period:	From:	5/1/2019	To:	5/1/2021
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8. Purpose of Grant:
 To establish an independent office of the Northern Border Regional Commission directed by a new executive director in accordance with the NBRC's authorizing statute. The statute prohibits the executive director from serving in federal service. This contract will enable the State of Vermont to house the new executive director, which will be paid for using NBRC administrative funds.

9. Impact on existing program if grant is not Accepted:
 The Northern Border Regional Commission will not comply with federal law, threatening the program's viability and approximately \$3 million in community and economic development grants to the State of Vermont annually.

10. BUDGET INFORMATION

	SFY 1 FY 2019	SFY 2 FY 2020	SFY 3 FY 2021	Comments
Expenditures:				
Personal Services	\$21,201	\$200,000	\$178,799	
Operating Expenses	\$	\$	\$	
Grants	\$	\$	\$	
Total	\$21,201	\$200,000	\$178,799	
Revenues:				
State Funds:	\$	\$	\$	
Cash	\$	\$	\$	
In-Kind	\$	\$	\$	
Federal Funds:	\$	\$	\$	
(Direct Costs)	\$	\$	\$	
(Statewide Indirect)	\$	\$	\$	
(Departmental Indirect)	\$	\$	\$	
Other Funds:	\$	\$	\$	
Grant (source NBRC Contract Payment)	\$21,201	\$200,000	\$178,799	Total \$400,000
Total	\$21,201	\$200,000	\$178,799	



STATE OF VERMONT REQUEST FOR GRANT (*) ACCEPTANCE (Form AA-1)

Appropriation No:	7120010000/Fund 21820	Amount:	\$21,201
			\$
			\$
			\$
			\$
			\$
			\$
		Total	\$21,201

PERSONAL SERVICE INFORMATION

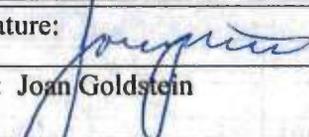
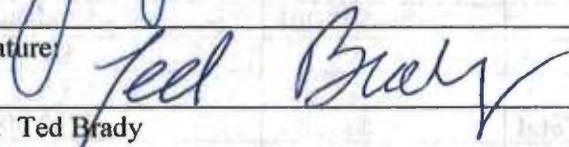
11. Will monies from this grant be used to fund one or more Personal Service Contracts? Yes No
 If "Yes", appointing authority must initial here to indicate intent to follow current competitive bidding process/policy.
 Appointing Authority Name: Joan Goldstein Agreed by: _____ (initial)

12. Limited Service Position Information:	# Positions	Title
	0	N/A
Total Positions		

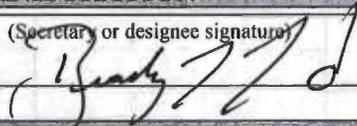
12a. Equipment and space for these positions: Is presently available. Can be obtained with available funds.

13. AUTHORIZATION AGENCY/DEPARTMENT

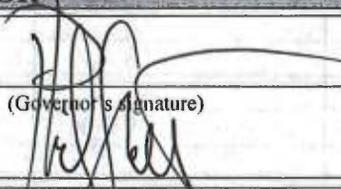
I/we certify that no funds beyond basic application preparation and filing costs have been expended or committed in anticipation of Joint Fiscal Committee approval of this grant, unless previous notification was made on Form AA-1PN (if applicable):

Signature: 	Date: 4/25/19
Title: Joan Goldstein	
Signature: 	Date: 4/25/19
Title: Ted Brady	

14. SECRETARY OF ADMINISTRATION

Approved: (Secretary or designee signature)  Date: 5/14/19

15. ACTION BY GOVERNOR

Check One Box:
 Accepted (Governor's signature)  Date: 6/7/19
 Rejected

16. DOCUMENTATION REQUIRED

Required GRANT Documentation

<input checked="" type="checkbox"/> Request Memo	<input type="checkbox"/> Notice of Donation (if any)
<input type="checkbox"/> Dept. project approval (if applicable)	<input type="checkbox"/> Grant (Project) Timeline (if applicable)
<input type="checkbox"/> Notice of Award	<input type="checkbox"/> Request for Extension (if applicable)
<input checked="" type="checkbox"/> Grant Agreement	<input type="checkbox"/> Form AA-1PN attached (if applicable)

STATE OF VERMONT REQUEST FOR GRANT (*) ACCEPTANCE (Form AA-1)

<input type="checkbox"/> Grant Budget	
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End Form AA-1

(*) The term "grant" refers to any grant, gift, loan, or any sum of money or thing of value to be accepted by any agency, department, commission, board, or other part of state government (see 32 V.S.A. §5).

1. **Parties:** This is a contract for services between the State of Vermont, Agency of Commerce and Community Development (“the State” or “ACCD”) and the **Northern Border Regional Commission (“NBRC”)** with principal place of business at **58 Pleasant Street, Suite 1201, Concord, NH 08801**. NBRC’s form of business organization is a federally chartered commission established by the United States Government under federal law.
2. **Subject Matter:** The subject matter of this contract is generally **to facilitate a timely, cost effective, and orderly onboarding of the NBRC’s first Executive Director**. Detailed services to be provided by the State are described in Attachment A.
3. **Maximum Amount:** In consideration of the services to be performed by the State, NBRC agrees to pay the State, in accordance with the payment provisions specified in Attachment B, **a maximum amount of \$400,000.00**.
4. **Contract Term:** The contract **commences on _____, 2019 and shall end on _____, 2021** unless modified by mutual agreement of the parties.
5. **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 NBRC and the State.
6. **Source of Funds: 100% NBRC funds.** All funds will come from an NBRC account.
7. **Cancellation:** This contract may be canceled by either party by giving written notice at least 30 calendar days in advance. If the agreement is terminated prior to the completion of an agreed upon deliverable, the State will provide to NBRC all files, data or deliverables in their condition at the date of termination along with an invoice for any hours expended but not yet billed. NBRC is required to reimburse the State for any unbilled hours expended in this previously approved effort up to NBRC’s receipt of the notice of termination of contract.
8. **Contact persons:** The State’s contact person for this contract is **Ted Brady**, ACCD Deputy Secretary; Telephone (802) 622-4200; email address ted.brady@vermont.gov. The NBRC contact person for this contract is **Harold B. Parker**, NBRC Federal Co-Chair; Telephone (603) 369-3001, ext. 2; email address fedcochair@nbrc.gov. Each party may appoint another contact person as appropriate, and in such event shall notify the other party of the new contact person and contact information.
9. **Attachments:** This contract consists of **16** pages, including the following attachments which are incorporated herein:
 - A. Attachment A – Specifications of Work to be Performed
 - B. Attachment B – Payment Provisions
 - C. Attachment C – Standard State Provisions for Contracts and Grants (revision date 12/15/2017)
 - D. Attachment D – Other Contract Provisions
10. **Order of Precedence:** Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:
 - A. Standard Contract

STATE OF VERMONT– Agency of Commerce & Community Development Contract #
CONTRACT FOR SERVICES with the Northern Border Regional Commission (NBRC)

- B. Attachment C – Standard State Provisions for Contracts and Grants (revision date 12/15/2017)
- C. Attachment D – Other Contract Provisions
- D. Attachment A – Specifications of Work to be Performed
- E. Attachment B – Payment Provisions

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

Please sign in Blue ink only.

By the State:

Date: _____

Signature: _____

Name: _____

Title: _____

Agency: Agency of Commerce &
Community Development

By NBRC:

Date: _____

Signature: _____

Name: Harold B. Parker

Title: Federal Co-Chair

[Remainder of page intentionally left blank]

**ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED**

The purpose of this contract is for the State of Vermont, Agency of Commerce and Community Development to provide services to the Northern Border Regional Commission (“NBRC”) **to facilitate a timely, cost effective, and orderly onboarding of the NBRC’s first Executive Director.** The State understands that during the term of this contract NBRC may request from the State the services described in the “Work to be Performed” section of this contract. If NBRC requests any such services from the State, the State will provide such services as follows.

Part I. Background

Authority of Northern Border Regional Commission

The Northern Border Regional Commission was established by Congress in 2008 in order to improve the economies of the region through investments in infrastructure necessary to support private investment, workforce development to meet the needs of transitioning business sectors, and community development that revitalizes the economies of the region’s traditional downtowns. §15301 (e) of NBRC’s enabling legislation provides that no member, alternate, officer, or employee of a Commission (other than the Federal Co-Chairperson, the alternate Federal Co-Chairperson, staff of the Federal Co-Chairperson, and any Federal employee detailed to the Commission) shall be considered to be a Federal employee for any purpose. Therefore, NBRC requires an external structure in order to begin employment beyond the Federal Co-Chairperson’s staff.

Since the beginning of the NBRC, all employees of the NBRC have been employees of the Federal Co-Chair. The Northern Border Regional Commission is required to hire and compensate the executive director and other personnel as necessary to carry out the duties of the Commission. There is specific directive from Congress that the executive director may not be a federal employee. The State of Vermont has the capacity and, pursuant to this agreement, agrees to ‘host’ the position until such time as the NBRC has created a structure in which to house the NBRC non-federal employees.

Part II. State of Vermont’s Role

Vermont Governor Phil Scott serves as the State Co-Chair of the Northern Border Regional Commission. The Vermont Agency of Commerce and Community Development, which houses the Governor’s alternate to the Commission, the ACCD Deputy Secretary, has agreed to house an exempt position paid for using NBRC administrative funds for up to two years to facilitate a timely, cost effective, and orderly onboarding of the NBRC’s first Executive Director. After ACCD and the Federal Co-Chair researched and considered multiple other options, including hiring an outside consultancy to conduct the hiring process, establishing a payroll and benefit system independently, and running a search process directly, it was determined that utilizing the State of Vermont’s existing human resources and benefit system was the most cost effective and timely way to onboard NBRC’s first Executive Director.

The ACCD Deputy Secretary on December 7, 2018 secured from Susanne Young, Vermont’s Secretary of Administration, written permission to convert one of ACCD’s unfunded and vacant statutorily created positions to be utilized for the Executive Director of the Northern Border Regional Commission to be housed within the Department of Economic Development.

Part III. Detailed Description of Work and Timeline

- A. The State will provide administrative and personnel support services including general office support, program management support, and administrative duties. The scope includes off-site administrative and logistical support services. The State shall perform the following services in order to assist NBRC in meeting its statutory obligations.
1. Host the Executive Director as an exempt State of Vermont employee.
 2. Provide the employee with all the services available to exempt State of Vermont employees, including:
 - a. Payroll services (to include direct deposit)
 - b. Time sheet services (to be monitored and reviewed by the ACCD Deputy Secretary)
 - c. Tax services
 - d. Filing of quarterly and annual reports to the Internal Revenue Service
 - e. State benefits including health insurance, dental insurance, flexible spending accounts, and state retirement plans
 - f. Other benefits as defined in State of Vermont Bulletin 12.8 dated March 1, 1996 outlining compensation and leave benefits for exempt employees
(http://humanresources.staging.vermont.gov/sites/humanresources/files/documents/Labor_Relations_Policy_EEO/Policy_Procedure_Manual/Number_12.8_COMPENSATION_FOR_EXEMPT_EMPLOYEES.pdf)
 - g. Paid time off for all State of Vermont holidays
 3. General overhead and support services as necessary, provided they are eligible for reimbursement by the NBRC, including:
 - a. Supplying the employee with a computer, other hardware as needed, software and information technology support.
 - b. Providing the employee with a cell phone and data plan as needed
 4. Access to State of Vermont employee travel benefits, to the extent eligible for reimbursement by NBRC, including:
 - a. The employee will adhere to State of Vermont Reimbursement Rates found online at <https://humanresources.vermont.gov/compensation/expense-reimbursement> (Note that exempt employees can only be reimbursed for a maximum of .18 per mile when using their personal vehicle).
 - b. Access to State of Vermont fleet vehicles for official travel
 - c. Access to State of Vermont rates when renting vehicles
 - d. Government hotel rates when traveling on official business

Part IV. Place of Service

The official duty station of the Executive Director will be Montpelier, Vermont. However, the employee will be authorized for 100 percent remote work from a location to be approved by NBRC and the State. The State of Vermont is not responsible for providing a desk or space to the Executive Director.

Part V. Disposal of Assets and Close Out

Any and all equipment and supplies the State of Vermont purchases for the Executive Director will remain the property of the State of Vermont, regardless of the source of funds utilized to purchase the equipment. Should the NBRC purchase equipment and supplies independent of the State of Vermont (not utilizing the state procurement system) these assets shall remain the property of the NBRC and the Executive Director.

(End of Attachment A)

[Remainder of page intentionally left blank]

**ATTACHMENT B
PAYMENT PROVISIONS**

1. The Northern Borders Regional Commission (NBRC) shall pay the State a sum not to exceed \$400,000.00 as reimbursement for actual costs on the basis of a written monthly invoice submitted to the NBRC by the State.
2. The State shall submit invoices to:

Northern Borders Regional Commission
58 Pleasant Street, Suite 1201
Concord, NH 08801
ATTN: Harold Parker
fedcochair@nbrc.gov

NBRC shall make payment to the **State of Vermont**, and mail or deliver to:

Agency of Commerce and Community Development,
Department of Economic Development
1 National Life Drive, Davis Building 6th Floor
Montpelier, Vermont 05620-0501
ATTN: Kristen Ziter

3. The State shall be paid based on documentation of monthly actual costs using general ledger reports of expenditures associated with the NBRC Executive Director's salary, benefits and operating costs.
4. Payment terms shall be Net 30 days.

(End of Attachment B)

[Remainder of page intentionally left blank]

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

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

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

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

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

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

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

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

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

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

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

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

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

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

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

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

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

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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

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

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal

has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

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

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

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

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

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

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

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

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

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.

- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Attachment C: Standard Provisions)

ATTACHMENT D: OTHER CONTRACT PROVISIONS

1. The following numbered paragraphs in Attachment C: Standard State Provisions for Contracts and Grants are amended as follows:

Paragraph 3:

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.

Paragraph 5:

5. No Employee Benefits For Party: Notwithstanding the services and benefits described in Part III of Attachment A that the State agrees to provide the NBRC Executive Director, the Party understands that the State will not provide the Party 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.

Paragraph 7:

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.

Paragraph 8:

Deleted in its entirety.

~~**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.~~

Paragraph 10:

Deleted in its entirety.

~~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.~~

Paragraph 11:

~~11. Whistleblower Protections: Consistent with all Federal protections for whistleblowers, Tthe 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.~~

~~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, all Federal laws 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.~~

Paragraph 15:

~~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.~~

Paragraph 16:

Deleted in its entirety.

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.~~

(End of Attachment D)

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