

**MAINTENANCE AGREEMENT
BETWEEN
STATE OF VERMONT
AND
TOWN OF GUILFORD
FOR
GUILFORD BF 0113 (68)
Contract Number: FM0222**

THIS AGREEMENT is made and entered into this 30th day of August, 2016, by and between the State of Vermont, acting through its Agency of Transportation, with its principal office at National Life Building, One National Life Drive, Montpelier, Vermont 05633-5001 (the "STATE") and the **Town of Guilford**, with its principal office at **236 School Road, Guilford, VT 05301** (the "MUNICIPALITY").

WITNESSETH:

WHEREAS, the STATE proposes to submit to the Federal Highway Administration, United States Department of Transportation, a federal-aid project known as **Guilford BF 0113 (68)** (the "Project"), which will provide certain improvements to **US Route 5**, as shown on the plans for this Project which have been provided to the MUNICIPALITY, described as follows:

Located in the County of Windham, Town of Guilford, on US Route 5, approximately 1.5 miles south of interstate 91 exit 1.5

Work ("the Work") to be performed under this Project includes replacement of the existing bridge with a new bridge, including a sidewalk, on the existing alignment with related roadway and channel work.

and;

WHEREAS, the MUNICIPALITY desires the improvements described above; and

WHEREAS, following completion of the Project, the MUNICIPALITY shall be responsible for the maintenance of **the sidewalk improvements, including but not limited to removal of ice and snow**; and

WHEREAS, the MUNICIPALITY further desires that the STATE act, insofar as necessary, for the MUNICIPALITY in the preparation of plans and the construction of the Project;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. State/Municipal Cooperation. The Work will be done by contract under the supervision of the STATE or its duly authorized representative. The STATE and MUNICIPALITY will cooperate to advance the Project. The STATE will submit design plans to the MUNICIPALITY as the Project reaches the stage of Final Plans.

2. Use of Municipal Facilities. During the period of construction of the Project, the MUNICIPALITY will grant the STATE or the STATE's authorized representative the following:

- a. Temporary entry onto the right-of-way of municipal highways in the Project area;
- b. Use of municipal highways for trucking and hauling, as may be required; and
- c. Authority to sign the Project construction site as necessary to provide information and warning to the public.

3. Allocation of State and Federal Funds to Project. All Project costs except those which are non-participating shall be paid with one hundred percent (100%) federal funds. For purposes of this Agreement:

- a. "Participating project cost" means items which the STATE and the Federal Highway Administration find necessary to accomplish the purpose of the Project and for which they will participate in funding.
- b. "Non-participating project cost" means items which the STATE and the Federal Highway Administration find unnecessary to accomplish the purpose of the Project, as well as items for which the STATE and the Federal Highway Administration were not responsible – *e.g.*, clean-up of pre-existing hazardous material contamination within the right-of-way of a town highway.

Determination of participation will be on the basis of the STATE's and the Federal Highway Administration's evaluation of items as they are presented.

4. Maintenance of Traffic Control Devices and Street Lights. All signs (including parking regulatory signs), traffic signals and pavement markings shown on the Project plans will be installed by the contractor and thereafter maintained in place by the STATE at no cost to the MUNICIPALITY, all in conformance with 23 V.S.A. Section 1025 and the latest edition of the Federal Highway Administration's *Manual on Uniform Traffic Control Devices (MUTCD)*. Once constructed, no changes shall be made to the parking and/or traffic control features without the prior written approval of the STATE and the Federal Highway Administration.

5. Right of Way Certification. The MUNICIPALITY shall provide certification that all signs to be installed in the Class 1 Town Highway portion of the project are within the highway right of way. This certification shall be furnished by the MUNICIPALITY to the STATE upon approval of Preliminary Plans.

6. Traffic Control; Detours. During construction of the Project, the STATE shall be responsible for the maintenance of traffic. If the Project route is closed to through traffic, the STATE will be responsible for selecting, signing, and maintaining a detour route at no cost to the MUNICIPALITY. This shall be accomplished in conformance with 23 V.S.A. Section 1025 and the latest edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD).

7. Project Plans; Conformance to Applicable State and Federal Laws, Regulations and Construction Standards. The Project will be constructed as the STATE, in cooperation with the Federal Highway Administration (FHWA), may determine, all as detailed in the Project plans. Construction of the Project will conform to applicable FHWA rules and regulations and to the applicable edition of the Vermont Agency of Transportation's Standard Specifications for Construction, as well as special provisions that may be included in the Project's proposal form and contract agreement.

8. Cancellation or Default by the State. If, due to the failure of the STATE, the Project is not constructed, then all costs incurred shall be borne in full by the STATE.

9. Cancellation or Default by Municipality. If at any time prior to award of a construction contract, the MUNICIPALITY no longer desires the project or is unable to provide Right of Way certification, then that portion of the project within the Class 1 town highway limits shall be removed from the Project, at no cost to the MUNICIPALITY.

10. Sidewalk Maintenance, Ice and Snow Removal. The MUNICIPALITY agrees that if the Project is approved, constructed, and accepted by the STATE, then the MUNICIPALITY shall be responsible for the maintenance of the sidewalk improvements, including but not limited to removal of ice and snow in a manner satisfactory to the Agency of Transportation or its authorized representatives and make ample provisions each year for such maintenance at no cost to the STATE or Federal Highway Administration. In this regard, the MUNICIPALITY acknowledges that its attention has been directed to the provisions of 19 V.S.A. Sections 304 (duties of selectboards) and 310 (highways, bridges and trails).

11. Maintenance of Roadways During Winter Suspension of Project Work. If construction of the Project is temporarily suspended for the winter season, the STATE will maintain roadways in the Project area, all in conformance with the provisions of the applicable edition of the Vermont Agency of Transportation's *Standard Specifications for Construction*, until construction operations resume in the spring.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, supersedes all prior oral or written negotiations, agreements, understandings and courses of dealing between the parties relating to the subject matter hereof and is subject to no understandings, conditions, or representations other than those expressly stated herein. This Agreement may only be modified or amended by a writing which states that it modifies or amends this Agreement and which is signed by both parties.

“participating Project cost” - are items for which the STATE and Federal Highway Administration would find necessary to accomplish the purpose of the Project; therefore, would participate in funding this work.

“non-participating Project cost” - are items for which the STATE and Federal Highway Administration would not find necessary to accomplish the purpose of the Project, or items for which the STATE and Federal Highway Administration were not responsible for; i.e. clean-up of hazardous material contamination within the right-of-way of a town highway. The STATE and Federal Highway Administration would not participate in funding this work. Determination is on the basis of the STATE and Federal Highway Administration’s evaluation of items as they are presented.

11. Section Headings. The section headings contained in this Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

12. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

13. Permits and Approvals; Compliance with Conditions. The MUNICIPALITY authorizes the STATE to apply for permits and approvals needed for the Project. The MUNICIPALITY further agrees to comply with permit and approval conditions. Unless otherwise agreed by the STATE and the MUNICIPALITY, the permits will be procured by the STATE.

14. Incorporations by Reference. The following attachment(s) are incorporated to and made a part of this Agreement:

Attachment C: Standard State Provisions for Contracts and Grants (Revised September 1, 2015) (4 Pages)

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

1. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.
7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Per Occurrence

\$1,000,000 General Aggregate

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

\$ 50,000 Fire/ Legal/Liability

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

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

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

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, 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.

10. **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.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 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. Party further agrees to include this provision in all subcontracts.

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

13. Taxes Due to the State:

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

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

- 15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.
- 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>
- 19. Certification Regarding Use of State Funds:** In the case that 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.
- 20. Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, 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).
- 21. Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR 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.
- 22. Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.

(End of Standard Provisions)

**STATE OF VERMONT
AGENCY OF TRANSPORTATION**

APPROVED AS TO FORM:
DATED: 6/14/16
William H. Rice
ASSISTANT ATTORNEY GENERAL

IN WITNESS WHEREOF, the Town of Guilford has caused its name to be subscribed this

23rd day of August, 20 16, by Sheila Morse

its Selectboard Chair and duly authorized agent(s)

TOWN OF GUILFORD

By: Sheila Morse

Sheila Morse - Selectboard Chair
Name

Title
and Its Duly Authorized Agent(s)

STATE OF VERMONT)

WINDHAM COUNTY, ss.)

At Guilford, this 23rd day of August, 20 16,

personally appeared Sheila Morse, Selectboard Chair
Name Title

and acknowledged the foregoing instrument, by him/her/them as duly authorized agent(s) of the
Town of Guilford subscribed, to be his/her/their free act and deed and the free act and deed of the
Town of Guilford.

Before me,

Penny Marine
Notary Public

(My commission expires 2-10-2019)