



EXECUTIVE COMMITTEE

Monday, April 15, 2019

4:00 p.m. at CVRPC Office

Page **AGENDA - AMENDED**

4:00¹ Adjustments to the Agenda

Public Comment

4:05 Contracts and Applications (enclosed)²

a) Northwest Regional Planning Commission – Local Energy Planning Year 3

4:10 Indirect Rate Changes (enclosed)²

Approval of rate reduction request for FY19 and FY20.

4:15 Application to NADO Research Foundation Advisory Committee (enclosed)²

Approval of Executive Director application

4:30 Adjourn

Next Meeting: Monday, May 6, 2019

Call in Option:

Dial-in Number: (712) 770-4700

Access Code: 960511

¹ All times are approximate unless otherwise advertised

² Anticipated action item.



MEMO

Date: April 14, 2019
To: Executive Committee
From: Bonnie Waninger, Executive Director
Re: Contract/Agreement Approvals

GRANT AND SERVICE AGREEMENTS RECEIVED

(Contracts and agreements valued at more than \$25,000)

Northwest Regional Planning Commission – Act 174 Municipal Assistance Year 3

Scope of Work:

- Draft town plan amendments/sections and custom analyses/maps/pathways for five (5) municipalities (Middlesex, Moretown, Plainfield, Waitsfield, and Washington), and determination review materials for each of those municipalities.
- provide a summary of best practices and lessons learned from the municipal plans/element to assist with updating the Best Practices Guide.
- Deliver a Best Practices training.

Funding: \$27,700

Funding Source: VT Department of Public Service (state)

Performance Period: 01/30/19 – 12/31/19

CVRPC Staff: Clare Rock (primary Moretown, Plainfield, Washington), Zach Maia, Dan Currier (primary Middlesex & Waitsfield), Jonathan DeLaBruere

Note: Senior Planners are teaming with Assistant Planners to work with five communities. Zach will work on four plans, and Jonathan on one plan. This combination of teaming allows CVRPC to adjust for existing Senior Planner workload while providing a wider variety of experiences for Assistant Planners.

1. **Parties.** This is a contract for services between the Northwest Regional Planning Commission (hereinafter called “NRPC” or “Contractor”), with a principal place of business in St. Albans, Vermont, and Central Vermont Regional Planning Commission (hereinafter called “subcontractor” or “RPC”). It is subcontractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of technical assistance to municipalities in the implementation of Act 174. Detailed services to be provided by subcontractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by subcontractor, NRPC agrees to pay subcontractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$27,700.00.

4. **Contract Term.** The period of subcontractor’s performance shall begin on January 30, 2019 and end on December 31, 2019.

5. **Prior Approvals.** This contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

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

7. **Termination for Convenience.** This contract may be terminated by NRPC at any time by giving written notice at least thirty (30) days in advance. In such event, subcontractor shall be paid under the terms of this contract for all services provided to and accepted by NRPC prior to the effective date of termination.

8. **Attachments.** This contract consists of 14 pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – Pass through from NRPC contract with the State of Vermont “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/15/2017)

Attachment D - Pass through from NRPC contract with the State of Vermont: Other Provisions

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

(1) Standard Contract

(2) Attachment D

(3) Attachment C (Standard Contract Provisions for Contracts and Grants)

(4) Attachment A

Act 174 Municipal Assistance Year 3

(5) Attachment B

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By Northwest Regional Planning Commission:

By the Subcontractor:

Date: 4/10/19

Date: _____

Signature: Catherine Dimitruk

Signature: _____

Name: Catherine Dimitruk

Name: _____

Title: Executive Director

Title: _____

ATTACHMENT A – STATEMENT OF WORKProject Description

NRPC shall be responsible for overall fulfillment of contractual responsibilities, including invoicing and reporting. Subcontractor will provide technical assistance pursuant to Section E.233 of Act 85 of 2017. The work will make use of data, analysis, and mapping currently under development by the RPCs under Contract #28403 and Contract #30934, as well as continue the work conducted under Contract #32701. With direction from NRPC, the Subcontractor will work cooperatively with other RPCs and with the State during the project, including in the development of guidance materials and deployment of technical assistance.

The work to be completed by the subcontractor covers two key areas: (1) providing technical assistance to municipalities in the implementation of Act 174, with consideration given to the need and size of a municipality and the availability, if any, of other assistance, expertise, or funds to implement Act 174; and (2) the development of a guidance document and related training that describes how regional and municipal plans can be implemented and used effectively in the Section 248 process.

Contract Oversight

Any changes to time, scope, and/or resources shall be discussed and approved by NRPC in advance and the impacts to the work to be performed will be determined and reduced to writing by NRPC and the Subcontractor in the form of a contract amendment.

Tasks and Deliverables**Task 1. - Plan Development**, 5 municipalities in the region, \$26,000.00

Deliverable: Draft plan amendments/sections and custom analyses/maps/pathways for each municipality receiving customized technical assistance, and determination review materials for each of those municipalities.

Subcontractor will provide custom technical assistance for municipalities. Custom technical assistance will consist of working with the municipality to draft plan amendments or new plan sections that meet the requirements for the enhanced energy element under 24 V.S.A. § 4348a(a)(3) as well as the determination standards issued by the State pursuant to Act 174, Secs. 6 and 9. This includes:

- a. Detailed training to the municipality to ensure full understanding of the standards and process for determinations of energy compliance pursuant to Act 174.
- b. Customize and refine the general analyses and maps for the municipality taking into account local data and local knowledge. Identify and map preferred areas for energy development and constraints on development consistent with local land use policies. The analyses and maps will meet the requirements for the enhanced energy element under 24 V.S.A. § 4348a(a)(3) as well as the determination standards issued by the State pursuant to Act 174, Secs. 6 and 9.
- c. Recommendations on potential pathways including goals, policies and actions to meet energy goals and targets.
- d. Draft plan amendment or new plan section. Review existing plan including land use, transportation, utilities and services and natural resources elements, to ensure consistency within the plan and with the determination standards. Recommend amendments as needed.

- e. In cooperation with the municipality, coordinate public meetings and other public input to ensure citizen input.
- f. Assistance as needed to municipalities with plan adoption and determination of energy compliance as needed, whether the municipality is pursuing determination directly with the State or will request RPC review and assessment.

Task 2a. – Plan Summary, Best Practices Review, \$1,000

Deliverable: Information as described below necessary to update the best practices guidance completed in year 2, in a format determined by NRPC.

Subcontractor will provide a summary of best practices and lessons learned from the municipal plans/elements completed under this contract. Subcontractor will provide NRPC with the most thorough, responsive, and replicable elements from the draft plan amendments, new plan sections, analyses, maps, and pathways resulting from the further technical assistance provided under this contract. Subcontractor will provide comment on a draft update to the Best Practices document.

Task 2b – Municipal Training - \$700

Deliverable: Documentation of training, including advertising materials, attendance and evaluation summary.

Subcontractor shall work with NRPC to develop and deliver a training describing the best practices for completion of energy plans and for their effective use in Section 248 proceedings.

Performance Measures

Upon receipt of each Deliverable submission, NRPC, in order to fully assess the effectiveness of this contract, may require additional information, consistent with this scope of work, from the subcontractor.

Failure by subcontractor to fulfill in a timely and proper manner its obligations under, or comply with, any of the terms or conditions of this contract shall constitute a Default. NRPC shall notify subcontractor of the Default, may establish a period not to exceed thirty (30) calendar days to correct such Default, and may cease payment of any portion of subcontract funds, until the Default is cured. If subcontractor does not cure the Default at the completion of the correction period, then State: (1) may require subcontractor to immediately reimburse to State any portions of Funds that were not expended or were expended in a manner inconsistent with or for purposes other than those specifically described in the terms and conditions of this contract; or, in the alternative, may forever retain any portion of Funds equal to the amount of reimbursement that would have otherwise been required by operation of the preceding clause; and/or (2) may immediately terminate this contract by giving written notice to the Contractor, specifying the effective date thereof.

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The subcontractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, subcontractor shall submit to NRPC: a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract.
2. Subcontractor shall submit invoices, progress reports and deliverables. Contractor shall retain all records itemizing work performed during the contract period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation sufficient to substantiate the amount invoiced for payment by NRPC.
3. Subcontractor shall submit invoices to NRPC in accordance with the schedule set forth in this Attachment B.
4. Invoices, accompanied by deliverables and progress reports shall be submitted to NRPC at the following address:

Amy Adams

aadam@nrpcvt.com
5. Subcontractor shall be paid as follows, provided the subcontractor has satisfactorily submitted required deliverables. Tasks 1 and 2a each have two deadline to allow for payments when deliverables are complete according to the payment conditions. In no case will payment exceed the maximum amount shown on page 1.

#	Task	Payment Amount	Invoice, Progress Report and Deliverable Deadline	Payment Condition(s)
1	1	pro-rated*	April 1, 2019	Upon submission of draft plan amendments/sections and custom analyses/maps/pathways for each municipality receiving customized technical assistance, and determination review materials for each of those municipalities. The payment will be pro-rated based upon the number of draft plans submitted and the number of municipalities the RPC has committed to providing technical assistance to.
2	1	pro-rated*	July 31, 2019	Upon submission of draft plan amendments/sections and custom analyses/maps/pathways for each municipality receiving customized technical assistance, and determination review materials for each of

				those municipalities. The payment will be pro-rated based upon the number of draft plans submitted and the number of municipalities the RPC has committed to providing technical assistance to.
3	1	pro-rated*	December 13, 2019	Upon submission of draft plan amendments/sections and custom analyses/maps/pathways for each municipality receiving customized technical assistance, and determination review materials for each of those municipalities. The payment will be pro-rated based upon the number of draft plans submitted and the number of municipalities the RPC has committed to providing technical assistance to.
4	2a	\$1,000	September 30, 2019	Upon submission of comments and input on the guidance document describing how regional and municipal plans can be used in the Section 248 process.
5	2b	\$700	December 13, 2019	Upon completion of training and submission of required deliverables.

* The total of payments shall not exceed the amount per task shown in the Statement of Work.

**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 Standard Provisions)

ATTACHMENT D
Other Provisions

1. **Work Product Ownership.** Upon full payment by the State, all products of Contractor's work, including but not limited to outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the joint property of the State of Vermont and Contractor. Contractor will exercise due care in creating or selecting material for publication to ensure that such material does not violate the copyright, trademark, or similar rights of others. The RPCs shall not use any copyright protected material in the performance of the work under this contract that would require the payment of any fee for present or future use of the same by the State. To the extent the RPCs use copyrighted materials in performance of work under this Contract, the RPCs shall document and provide the State with the precise terms of the licensed use granted to the State by the owner of the copyright for future use of the copyrighted material.
2. **Prior Approval/Review of Releases.** Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by Contractor under this contract shall be approved by the State prior to release.
3. **Public Records:** Notwithstanding any provision contained herein, the records remaining solely in the possession of any client entity of the Contractor that is not a Regional Planning Commission (RPC) shall not be subject to public inspection under the provisions of 1 V.S.A., chapter 5, subchapter 3. The only records of a client entity that is not an RPC that will be subject to public inspection are those documents actually in Contractor's possession and not exempt from public inspection pursuant to Vermont's Access to Public Records Law or any other provision of law.
4. **Confidential Information.** Contractor agrees to keep confidential all information produced or acquired by Contractor in connection with this Contract. Contractor will take reasonable measures as are necessary to restrict access to this information to employees or agents who must have the information on a "need to know" basis. Contractor shall promptly notify the State of any third-party request for this information so that the State may act to protect its confidentiality.



MEMO

Date: April 14, 2019
 To: Executive Committee
 From: Bonnie Waninger, Executive Director
 Re: FY19 and FY20 Indirect Rate Adjustments

✉ **ACTIONS REQUESTED: Approve submission of the FY19 and FY20 indirect rate change requests to VTrans.**

FY19 Indirect Rate Adjustment

As noted at the March 4 Executive Committee meeting, CVRPC is recovering more administrative costs that it is expending. An over recovery is a profit, which is unallowable under federal regulations, so the profit is treated as an advance on administrative costs. Adjustments are made to rates in future years so that an under recovery happens. The advanced funds then are used to make up the difference.

123.97%	Approved rate for FY19
115%	Actual incurred rate as of 02/28/19
~9%	Difference approved to actual
117%	Requested rate for April-June

Lowering our indirect rate now helps avoid an up-and-down bounce effect in the indirect rate, creating more stability for the organization and its funders. Our goal is to use an indirect rate that is within 5% of the year-end actual indirect rate.

If the FY19 rate is not adjusted, CVRPC will be required to lower its FY21 indirect rate to under recover (take a loss). The lower rate would create force CVRPC to use the advanced funds.

FY20 Indirect Rate Adjustment

Based on CVRPC's FY19 experience, administrative costs that are stable or decreasing, and having a full complement of staff, Nicole and I believe the rate requested for FY20 is too high. The rate was based on FY18 audited financials and guestimates based on the FY20 budget expectations as of January 31, 2019. The enclosed forms depict how the rate is calculated.

120.77%	Approved rate for FY20
115%	Requested rate for FY20

Background

CVRPC monitors its actual indirect rate at various times through the year. No adjustments are requested until after December 31 unless there are extraordinary events. If the December 31 financials show CVRPC is within 10% of its actual rate, staff monitors for two additional months. If the December 31 rate is greater than 10% differenced or the February 28 rate is not within 5% of the actual rate, a rate adjustment is requested. This avoid over or under recovery of administrative costs and large rate swings in future years.



April 15, 2019

Lisa Steventon, AOT Audit Specialist II
Finance & Administration Division, Audit Section
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633

Dear Lisa,

The Central Vermont Regional Planning Commission (CVRPC) requests approval to adjust its FY19 Indirect Rate. CVRPC requests to modify its current rate of 123.97% to 117% for April 1 through June 30, 2019. This voluntary cap will assist CVRPC to avoid significant over recovery of indirect costs.

CVRPC's current approved indirect rate was based on lower direct costs. Additional contracts and full staffing have driven the over recovery of indirect.

To determine the new rate, CVRPC calculated its actual indirect and direct costs as of February 28, 2019. The calculation demonstrated CVRPC's actual indirect rate was ~115%. CVRPC annually incurs increased administrative costs in the last quarter of the fiscal year. Through this rate adjustment, CVRPC aims to have its audited FY19 indirect recovery fall within 5% of its actual costs. A lower rate may result in under recovery of costs.

CVRPC management has discussed the rate modification with its Executive Committee. The Executive Committee approved the rate change at its April 15, 2019 meeting.

CVRPC appreciates this opportunity to adjust its indirect rate for FY19.

If you have any questions, we invite you to contact Bonnie at waninger@cvregion.com or 229-0389.

Sincerely,

Bonnie Waninger
Executive Director

Juliana Potter
Chair



April 15, 2019

Lisa Steventon, AOT Audit Specialist II
Finance & Administration Division, Audit Section
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633

Dear Lisa,

The Central Vermont Regional Planning Commission (CVRPC) requests approval to adjust its FY20 Indirect Rate. CVRPC requests to modify its current rate of 120.77% to 115% for July 1, 2019 through June 30, 2020. This adjustment will assist CVRPC to avoid over recovery of indirect costs.

CVRPC's current approved indirect rate was based on FY18 actuals and FY19 estimates. CVRPC believes its administrative costs have stabilized or may continue to decrease. Additionally, a return to full staffing has stabilized indirect recovery.

CVRPC management has discussed the rate modification with its Executive Committee. The Executive Committee approved the rate change at its April 15, 2019 meeting.

CVRPC appreciates this opportunity to adjust its indirect rate for FY20.

If you have any questions, we invite you to contact Bonnie at waninger@cvregion.com or 229-0389.

Sincerely,

Bonnie Waninger
Executive Director

Juliana Potter
Chair

FY2020 INDIRECT RATE CALCULATION WORKSHEET

Step 1 - Document Previously Approved Indirect Rates

Approved FY15 Indirect Rate
 Approved FY16 Indirect Rate
 Approved FY17 Indirect Rate
 Approved FY18 Indirect Rate
 Approved FY19 Indirect Rate

153.40%
 137.31%
 106.90%
 99.84%
 123.97%

CVRPC's approved indirect rates for the FY15-FY18 reflect its efforts to decrease its administrative costs. The increased rate in FY19 was a result of an under recovery of costs in FY17 due to an extended staff illness and the resulting position vacancy. This demonstrates the bounce effect that over and under recovery can have on the rate.

Step 2 - Show Actual Audited Indirect Costs and Base for FY2018

As Shown in FY18 Audit Report, page 18

Actual Audited FY18 INDIRECT COSTS	\$	355,950
Actual Audited FY18 Direct salaries	\$	320,208
Actual Audited FY18 Direct fringe	+	\$ 84,863
Actual Audited DIRECT COSTS	\$	405,071

Actual Indirect Rate for FY18 (INDIRECT/DIRECT) = 87.87%

This is the actual indirect cost rate CVRPC incurred for FY18. It was lower than the rate charged (99.84%) so "payback" was required in FY20.

Step 3 - Calculate the Carry Forward Adjustment

	Direct	
Actual recovered Direct & Indirect Costs in FY18	\$ 295,287	\$ 294,807
Indirect that should have been recovered	87.87%	\$ 259,479
Adjustment- Difference in indirect costs recovered		\$ 35,328

Step 4 - Estimate Indirect Costs and Base for Proposed Indirect Rate Calculation

ESTIMATED FY20 INDIRECT COSTS	\$	398,000	Based on anticipated FY20 budget. The actual indirect rate for FY20 is estimated to be within 5% of the approved rate of 123.97% for FY19.
ESTIMATED FY20 Direct salaries	\$	229,045	
ESTIMATED FY20 Direct fringe	\$	71,250	
Estimated DIRECT COSTS	\$	300,295	

Step 5 - Calculate the Proposed Rate with Carry Forward Adjustment

	Estimated Costs for FY20		Carry Forward Adjustment	
INDIRECT COSTS	\$ 398,000	+/-	\$ (35,328)	= \$ 362,672
DIRECT COSTS				\$ 300,295
Proposed Indirect Rate for FY20				120.77%

This is the adjustment for over recovery of administrative costs in FY18. Without the adjustment, CVRPC's rate would have been 132.53%. The projected rate was based on the initial FY20 budget, which had a fewer contracts than normal. Subsequent contract awards changed the ratio because additional billable work occurred.

CENTRAL VERMONT REGIONAL PLANNING COMMISSION
SCHEDULE OF DIRECT AND INDIRECT COSTS
FOR THE YEAR ENDED JUNE 30, 2018

SCHEDULE 2

	Total Expenses	Direct Expense	Unallowable Indirect Expense (a)	Total Allowable Indirect Expense
Salaries and wages	\$ 465,758	\$ 320,208	\$ -	\$ 145,550
Payroll taxes and benefits	139,546	84,863	-	51,683
Consultants	520,394	520,394	-	-
Professional services	58,286	4,959	-	53,329
Marketing	1,278	443	-	835
Insurance	1,482	-	-	1,482
Copy and printing	8,814	-	-	8,814
Depreciation	5,514	-	1,244	4,270
Rent and utilities	42,649	-	-	41,059
Office expenses	11,108	-	-	4,936
Equipment, repairs and software	5,784	-	-	5,784
Dues and subscriptions	9,992	1,235	3,655	5,102
Telephone	6,682	-	-	6,682
Travel	14,055	12,303	-	1,752
Meetings and programs	8,260	4,588	-	3,672
Audit and legal services	7,746	-	-	7,746
Postage	2,207	32	-	2,175
Other	6,806	6,172	315	11,079
	<u>\$ 1,316,361</u>	<u>\$ 955,197</u>	<u>\$ 5,214</u>	<u>\$ 355,950</u>

(a) Costs not allowed under 2 CFR Part 200 Subpart E - Cost Principles

A "Direct Expense" is a cost that can be billed *directly* to a contract. Examples are a staff member's time on the project and travel costs to project-related meetings.

An "Indirect Expense" is a cost that relates to more than one contract. Examples include accounting services, rent, and purchase of computers and office supplies.



MEMO

Date: February 1, 2019
To: Executive Committee
From: Bonnie Waninger, Executive Director
Re: NADO Research Foundation Advisory Committee participation

☒ **ACTION REQUESTED:** Approve a letter acknowledging the Executive Director's application to participate on the NADO Research Foundation Advisory Committee for a two-year term and expressing CVRPC's support for the Director's in-person attendance at up to three meetings each year.

CVRPC is a member of the National Association of Development Organizations (NADO). NADO membership helps alert CVRPC to current national trends and federal government strategies and opportunities. I am requesting CVRPC and Committee support to use participation in the NADO Research Foundation Advisory Committee as a professional development opportunity. CVRPC's financial commitment would be ~\$7,500-10,000. The organization currently invests \$2,500-5,000 for the Director's NADO-related professional development.

The application for the 2019-2021 Eastern Region term is due no later than April 19, 2019. Candidates are notified by April 30, 2019.

Background

The NADO Research Foundation Advisory Committee:

- works with the Research Foundation leadership and staff to identify issues and topics of relevance and concern to NADO members;
- provides guidance and offers ideas for the Research Foundation staff concerning information, research and training programs and opportunities that serve the membership; and
- shares their individual and collective professional expertise, in-depth knowledge of regional approaches to economic development, and connections to resources at various levels.

After developing a strategic plan in 2019, NADO shifted the Research Foundation's role from an after-the-fact reporting body for regional organization accomplishments (disaster preparedness, transportation, economic development, etc.) to be a forward-thinking body that assists regional organizations to understand emerging and future issues and to identify strategic activities to address them.

Committee members serve two-year terms. The Committee generally meets three times per year in conjunction with NADO's Washington Conference, NADO's Summer Board Meeting, and NADO's Annual

Training Conference. Additional meetings will occur via conference call or webinar as needed. I currently participate in the Washington Conference and Annual Conference as time and funds allow.

The Advisory Committee composition includes eight members: one from each of the six NADO membership regions; one representing the Associate Membership category; and the NADO Research Foundation President.



April 15, 2019

Laurie Thompson, Deputy Executive Director
National Association of Development Organizations
400 North Capitol Street, NW, Suite 388
Washington, DC 2001

Dear Laurie,

The Central Vermont Regional Planning Commission acknowledges that Bonnie Waninger, Executive Director, has applied to participate on the NADO Research Foundation Advisory Committee for a two-year term.

Participation in NADO has assisted CVRPC to maintain awareness of current national trends and federal government strategies and opportunities. Bonnie's skill in strategic planning will complement NADO's anticipated shift for the Research Foundation to a forward-thinking body that assists regional organizations to understand emerging and future issues and to identify strategic activities to address them. Her experience in three different regions of Vermont have fostered an understanding of how different regional economies drive a need for different solutions.

The Commission's Executive Committee agrees that the organization will support the Director's in-person attendance at up to three meetings each year and participation in other Committee meetings via conference call or webinar as needed.

If you have any questions about CVRPC's support or Bonnie's skills and experience, I invite you to contact me at julianapotter@yahoo.com.

Sincerely,

Juliana Potter
Chair, Board of Commissioners