

ATTACHMENT C

Standard Agreement Provisions

REVISED OCTOBER 1, 2024

- 1) **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee, or Subrecipient, with whom the Central Vermont Regional Planning Commission (hereafter "CVRPC") 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 of Vermont 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. Where an authorized individual is either required to click-through or otherwise accept, or made subject to, any electronic terms and conditions to use or access any product or service provided hereunder, such terms and conditions are not binding and shall have no force or effect. Further, any terms and conditions of Party's invoice, acknowledgment, confirmation, or similar document, shall not apply, and any such terms and conditions on any such document are objected to without need of further notice or objection.
- 3) **Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont without resort to conflict of laws principles. Any action or proceeding brought by either the CVRPC 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 CVRPC regarding its performance under this Agreement. Party agrees that the CVRPC shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4) **Sovereign Immunity:** The CVRPC reserves all immunities, defenses, rights, or actions arising out of the CVRPC's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the CVRPC's immunities, defenses, rights, or actions shall be implied or otherwise deemed to exist by reason of the CVRPC's entry into this Agreement.
- 5) **No Employee Benefits For Party:** The Party understands that the CVRPC 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 CVRPC employees, nor will the CVRPC 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 CVRPC.
- 7) **Defense and Indemnity:**
 - a) The Party shall defend the CVRPC 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 CVRPC 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 CVRPC retains the right to participate at its own expense in the defense of any claim. The CVRPC shall have the right to approve all proposed settlements of such claims or suits.

- b) 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.
 - c) The Party shall indemnify the CVRPC and its officers and employees if the CVRPC, 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.
 - d) 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 CVRPC 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:** During the term of this Agreement, Party, at its expense, shall maintain in full force and effect the insurance coverages set forth in the Vermont State Insurance Specification in effect at the time of incorporation of this Attachment C into this Agreement. The terms of the Vermont State Insurance Specification are hereby incorporated by reference into this Attachment C as if fully set forth herein. A copy of the Vermont State Insurance Specification is available at: <https://aoa.vermont.gov/RiskClaims-COI>.
- 9) Reliance by the CVRPC on Representations:** All payments by the CVRPC 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:** Any liability to the CVRPC under the Vermont False Claims Act (32 V.S.A. § 630 et seq.) shall not be limited notwithstanding any agreement of the CVRPC 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) Use and Protection of CVRPC Information:**
- a) As between the CVRPC and Party, "CVRPC Data" includes all data received, obtained, or generated by the Party in connection with performance under this Agreement. Party acknowledges that certain CVRPC Data to which the Party may have access may contain information that is deemed confidential by the CVRPC, or which is otherwise confidential by law, rule, or practice, or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("Confidential CVRPC Data").
 - b) With respect to CVRPC Data, Party shall:
 - i) take reasonable precautions for its protection;
 - ii) not rent, sell, publish, share, or otherwise appropriate it; and
 - iii) upon termination of this Agreement for any reason, Party shall dispose of or retain CVRPC Data if and to the extent required by this Agreement, law, or regulation, or otherwise requested in writing by the CVRPC.
 - c) With respect to Confidential CVRPC Data, Party shall:

- i) strictly maintain its confidentiality;
 - ii) not collect, access, use, or disclose it except as necessary to provide services to the CVRPC under this Agreement;
 - iii) provide at a minimum the same care to avoid disclosure or unauthorized use as it provides to protect its own similar confidential and proprietary information;
 - iv) implement and maintain administrative, technical, and physical safeguards and controls to protect against any anticipated threats or hazards or unauthorized access or use;
 - v) promptly notify the CVRPC of any request or demand by any court, governmental agency or other person asserting a demand or request for Confidential CVRPC Data so that the CVRPC may seek an appropriate protective order; and
 - vi) upon termination of this Agreement for any reason, and except as necessary to comply with subsection B.iii above in this section, return or destroy all Confidential CVRPC Data remaining in its possession or control.
- d) If Party is provided or accesses, creates, collects, processes, receives, stores, or transmits Confidential CVRPC Data in any electronic form or media, Party shall utilize:
- i) industry-standard firewall protection;
 - ii) multi-factor authentication controls;
 - iii) encryption of electronic Confidential CVRPC Data while in transit and at rest;
 - iv) measures to ensure that the CVRPC Data shall not be altered without the prior written consent of the CVRPC;
 - v) measures to protect against destruction, loss, or damage of CVRPC Data due to potential environmental hazards, such as fire and water damage;
 - vi) training to implement the information security measures; and
 - vii) monitoring of the security of any portions of the Party's systems that are used in the provision of the services against intrusion.
- e) No Confidential CVRPC 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 United States, except with the express written permission of the CVRPC.
- f) Party shall notify the CVRPC within twenty-four hours after becoming aware of any unauthorized destruction, loss, alteration, disclosure of, or access to, any CVRPC Data.
- g) State of Vermont Cybersecurity Standard Update: Party confirms that all products and services provided to or for the use of the CVRPC under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update in effect at the time of incorporation of this Attachment C into this Agreement. The State of Vermont Cybersecurity Standard Update prohibits the use of certain branded products in CVRPC information systems or any vendor system, and a copy is available at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>
- h) In addition to the requirements of this Section 12, Party shall comply with any additional requirements regarding the protection of data that may be included in this Agreement or required by law or regulation.

- 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 this Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the CVRPC, State of Vermont 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, and shall include this provision in all subcontracts for work performed in Vermont. 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) Offset:** The CVRPC may offset any sums which the Party owes the CVRPC against any sums due the Party under this Agreement; provided, however, that any offset of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in 32 V.S.A. § 3113.
- 16) Taxes Due to the State of Vermont:** 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.
- 17) Taxation of Purchases:** All CVRPC 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, Party is not under an obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order. 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 CVRPC. Party shall be responsible and liable to the CVRPC 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 CVRPC 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), as amended by Section 17 of Act No. 142 (2010) and by Section 6 of Act No. 50 (2011).

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 ("Confidentiality and Protection of CVRPC Information"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State of Vermont"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("CVRPC Facilities"); and Section 32.A ("Certification Regarding Use of State of Vermont 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 CVRPC during the term of this Agreement.
- 21) Regulation of Hydrofluorocarbons:** Party confirms that all products provided to or for the use of the CVRPC under this Agreement shall not contain hydrofluorocarbons, as prohibited under 10 V.S.A. § 586.
- 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 of Vermont's debarment list at: <https://bgs.vermont.gov/purchasing-contracting/debarment>.
- 23) Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.
- 24) Vermont Public Records Act:** Party acknowledges and agrees that this Agreement, any and all information obtained by the CVRPC from the Party in connection with this Agreement, and any obligations of the CVRPC to maintain the confidentiality of information are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.
- 25) Force Majeure:** Neither the CVRPC 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 lockouts) ("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 use the CVRPC's logo or otherwise refer to the CVRPC 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 CVRPC.
- 27) Termination:**
- a) Non-Appropriation:** If this Agreement extends into more than one fiscal year of the CVRPC (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the CVRPC may cancel this Agreement at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the CVRPC may suspend or cancel this Agreement immediately, and the CVRPC shall have no obligation to pay Party from CVRPC 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 CVRPC. All CVRPC property, tangible and intangible, shall be returned to the CVRPC upon demand at no additional cost to the CVRPC in a format acceptable to the CVRPC.

- 28) Continuity of Performance:** In the event of a dispute between the Party and the CVRPC, 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) CVRPC Facilities:** If the CVRPC makes space available to the Party in any CVRPC 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, CVRPC facilities, which shall be made available upon request. CVRPC 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 Federal Audit Clearinghouse within nine months. If a single audit is not required, only the Subrecipient Annual Report is required. A Single Audit is required if the subrecipient expends \$1,000,000 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.
 - c) Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the CVRPC, 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 of Vermont-Funded Grants:**
- a) Certification Regarding Use of State of Vermont Funds:** If Party is an employer and this Agreement is a State of Vermont-funded grant in excess of \$1,000, Party certifies that none of these State of Vermont 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 of Vermont funded grant, Party hereby represents: (i) that it has signed and provided to the CVRPC 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)