



Vermont Community Broadband Board (VCBB)

112 State Street

Montpelier, VT 05620-2601

**Contact: Robert Fish, Rural Broadband Technical Assistance Specialist, 802-522-2617,
robert.fish@vermont.gov.**

Broadband Preconstruction Grant Program

ISSUE DATE: September 7, 2021

RESPONSES WILL BE ACCEPTED ON A ROLLING BASIS

OVERVIEW

The Vermont Community Broadband Board ("Board") invites applications from individual Communications Union Districts ("CUDs"), groups of CUDs, or partners of CUDs for funds to facilitate the pre-construction work necessary to construct broadband networks capable of speeds of at least 100 Mbps symmetrical.

Background and Eligible Costs

As provided by Sec. 2 § 8085 of Act No. 71, which became law on June 8, 2021, the purpose of the Broadband Preconstruction Grant Program ("Program") is to provide grants to CUDs ("Districts") for preconstruction costs related to broadband projects that are a part of a universal service plan and meet other criteria as specified in Act No. 71.

As provided by Sec. 2 § 8085 of Act No. 71, eligible costs include expenses for feasibility studies, business planning, pole data surveys, engineering and design, and make-ready work associated with the construction of broadband networks, including consultant, legal, and administrative expenses, and any other cost deemed appropriate by the Board.

Note: The Program is funded by the American Rescue Plan Act of 2021 (ARPA). All ARPA funded projects must either address the impacts of the COVID-19 pandemic or promote sustained economic recovery. Additional state and federal guidelines may impact the administration of this grant program. The Board reserves the right to make changes to this Program as necessary to ensure compliance with any state and federal guidelines, including revocation of grant awards.

Funding Available

Up to \$30,000,000 is available to the Preconstruction Program. After the first round, the Board may adjust the amount based on the demonstrated need for preconstruction funding and an evaluation of the need for construction funding.

CUDs and their partners are encouraged to submit a proposal for all expected preconstruction costs related to their phase 1 build-out or what is required to inform negotiations with a potential partner.

Pursuant to Act 71 § 8085(c), to ensure an equitable distribution of funds under the Program to encourage collaborative work among communications union districts, the Board has established a formula for determining the maximum amount available to each CUD via the current interim Program based on the number of unserved and underserved addresses with no existing, funded plan for service.

Funding Allocation Per Communications Union District (CUDs)

- # of Unserved/ Underserved Addresses (without a funded plan for eligible service) in all CUDs.
- Calculate the estimated percentage of those locations to be served by each CUD.
- Multiply the total amount of funds available for Preconstruction between Act 9 (\$1.6 Million) and Act 71 (\$30 Million) by that percentage.
- Subtract grant awards from Act 9 from the total amount of available funding to each CUD.
- The result is the “amount remaining” per CUD for Preconstruction Funding.

Applicants should refer to the chart below to see the estimated cap on preconstruction awards available to each Communications Union District. The amount listed should be used for guidance purposes only. The amounts are current as of the issuance of this request for proposals. An up-to-date table showing grants awarded and the remaining available funds for each Communications Union District will be posted to the Vermont Community Broadband Board website.

Communications Union District	Amount Remaining After CUD Preconstruction and Capacity Awards
Addison CUD	\$4,202,083
CVFiber	\$2,804,667
Deerfield Valley CUD	\$4,122,703
ECFiber	\$3,218,067
Lamoille FiberNet CUD	\$2,563,363
NEK Broadband	\$6,670,000
Northwest CUD	\$3,558,933
Otter Creek CUD	\$1,705,133
Southern Vermont CUD	\$1,154,433

The Board reserves the right to adjust these caps and the total amount of funding available to ensure an equitable distribution and the efficient roll out of broadband across all CUDs. Potential reasons for adjusting the formula or making exceptions include the publishing of updated broadband availability data showing a dramatic decrease in the number of underserved addresses in a district shifting the allocation between CUDs by more than 2% or a demonstrated additional need based on the density of an area to be served. The aforementioned list is not exclusive. The Board shall solicit comments from all eligible applicants before making a change.

Applicant should only apply for what is needed within the next eighteen (18) months. The Board will not approve requests equal to the entire estimated amount available.

Distribution of Funds

The Board will negotiate with each Applicant the appropriate distribution of funds. The distribution of funds will be determined by a risk assessment of each Applicant and the nature and requirements of each activity to be funded. No recipient will be provided with more than 50% of the grant award upon execution of the grant agreement, following by

the remaining 50% upon submission of documents detailing incurred expenses and/or invoices for the remaining 50%.

Proposal Submission

Proposals must be submitted electronically to vcbb@vermont.gov as a PDF. All attachments and supporting materials must be attached as a single zip file.

- **Deadline:** Applications will be accepted on a rolling basis starting September 8, 2021.
- **Notification:** The Executive Director shall make recommendations to the Vermont Community Broadband Board within seven business days of receipt of the application. The Board will review and consider applications at the next board meeting.

Elements of Proposal

In response to this grant opportunity, each Applicant is required to submit a proposal containing the following. In addition to the written submission, applicant may be asked to present to the Board on their proposal:

Part 1: Transmittal Letter

- a) Official name and full contact information for the Communications Union District(s) and any collaborators
- b) DUNS # and SAM #
- c) Applicant Certification: Applicant shall certify that the person submitting the proposal is the person in the Applicant's organization responsible for, or authorized to make, decisions as to the prices quoted and that he or she has not participated in any action contrary to the non-collusion requirements of this grant opportunity

Part 2: Narrative

Applicant should not assume reviewers of the proposal will have previous knowledge the District's history, plans, or current operations.

The narrative proposal should include, at the minimum, the following information.

Section 1: Background and Capacity

- a) About the Communications Union District
 - 1) *History and Map of the Communications Union District*
 - 2) *Data on the District*
 - i. Member towns
 - ii. Total number of E911 locations by town
 - iii. Total number of E911 locations with less than 25/3 service by town
 - iv. Total number of E911 locations with 4/1 or less service by town
 - v. Electric distribution utilities providing service to each member town
 - vi. Internet Service Providers (ISPs) currently delivering broadband service to each member town
- b) *Current Capacity*
 - 1) List of current employees and any hiring plans
 - 2) Key Board Members and Advisors
 - 3) Current contractors

- 4) An overview of the Applicant’s financial control, grant management, and compliance systems. Applicant shall detail their plan for ensuring compliance with all federal guidelines detailed that apply to State Fiscal Recovery Funds.¹
- c) *Other Sources of Funding*
The applicant shall provide a complete list of all grants awarded in the previous two years. Applicant shall include the source, date, amount, and a brief summary of the scope of work for each grant.
- d) *Confirmation of the Communications Union District Commitment to Universal Service.*
“Universal service plan” is defined as a plan for providing each unserved and underserved location connected to the electrical grid in a communications union district access to broadband service capable of speeds of at least 100 Mbps download and 100 Mbps upload. Applicant shall cite any bylaws, operating documents, or studies demonstrating a commitment to universal service. Successful Applicant will demonstrate that the reach and scope of the District’s strategy does not create locations that are inefficient to serve by any carrier.
- e) *Operating Agreements and Other Partnerships*
Applicant shall provide an overview of any operating or partnership agreement entered into by the Communications Union District. If the Applicant has not entered into such agreement, the applicant shall provide an overview of discussions and a timeline. If an applicant is not pursuing such agreements, the Applicant shall detail its plan for operating the network.

Section 2: Previous Planning and Preconstruction Activities

- a) *Previous planning activities. Applicant shall provide the following:*
 - 1) Feasibility study - Applicant shall attach or provide a link to any feasibility studies.
 - 2) Business plan - If the Applicant’s business plan has not been finalized, the Applicant shall provide a status update and elaborate as to why and how the activities proposed will enhance and expedite the plan. Applicant shall provide a link or attach a copy of the business plan. If the Applicant’s current or draft business plan requires updating, the Applicant is encouraged to include funding for such an update in this funding request.

¹ The following 2CFR policy requirements apply to this assistance listing:

Subpart B, General provisions

Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards

Subpart D, Post Federal; Award Requirements

Subpart E, Cost Principles

Subpart F, Audit Requirements

The following 2CFR policy requirements are excluded from coverage under this assistance listing:

Not Applicable

Additional Information: The following 2 CFR Policy requirements also apply to this assistance listing: 2 C.F.R. Part 25, Universal Identifier and System for Award Management; 2 C.F.R. Part 170, Reporting Subaward and Executive Compensation Information; and 2 C.F.R. Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement). The following 2 CFR Policy requirements are excluded from coverage under this assistance listing: For 2 CFR Part 200, Subpart C, the following provisions do not apply to the SLFRF program: 2 C.F.R. § 200.204 (Notices of Funding Opportunities); 2 C.F.R. § 200.205 (Federal awarding agency review of merit of proposal); 2 C.F.R. § 200.210 (Pre-award costs); and 2 C.F.R. § 200.213 (Reporting a determination that a non-Federal entity is not qualified for a Federal award). For 2 CFR Part 200, Subpart D, the following provisions do not apply to the SLFRF program: 2 C.F.R. § 200.308 (revision of budget or program plan); 2 C.F.R. § 200.309 (modifications to period of performance); C.F.R. § 200.305 (b)(8) and (9) (Federal Payment)

b) *Previous preconstruction activities*

Applicant shall provide an overview and status update on ongoing preconstruction work. This includes all work funded by the H315 Preconstruction and Capacity Grants.

Section 3: Strategy and Proposed Activities

a) *Overall Strategy*

Applicant shall provide a detailed narrative describing the overall strategy being pursued to provide 100/100 Mbps to all unserved and underserved on-grid addresses in the Communications Union District.

b) *Capacity Support*

Applicant shall provide the following:

- 1) A complete overview of the expected capacity needs of the Communications Union District over the next eighteen (18) months
- 2) A detailed description of each item for which the Applicant is requesting funding.
- 3) An explanation as to how other needs not included in this funding proposal are being met.

c) *Preconstruction Activities*

Applicant shall provide the following:

- 1) The expected timeline for the entire project from preconstruction through when the first customer is served. If preconstruction activities are to support multiple phases of construction, the Applicant shall provide a timeline for each build.
- 2) A detailed description of each activity for which the Applicant is requesting funding. In the description, please detail the engineering standards included or to be included any Request for Proposals for the activity or confirm a willingness to abide by standards developed by the Board. All projects are required to adopt industry-accepted engineering standard that promotes network reliability, resiliency, and interoperability and accounts for expected growth.
- 3) Contingencies if that timeline cannot be met. What risks have been identified? How will they be addressed?

Section 4: Other Act 71 Considerations

Act 71 requires the Board to evaluate how proposed projects addresses a variety of issues when reviewing Construction Grant proposals. Since the intention of the Preconstruction Grant Program is to assist Communications Union Districts in developing plans eligible for Construction Funding under the Act. Applicant are requested to briefly address the following issues. The Board does not expect detailed plans as part of this application, but rather evidence that the Applicant is considering these issues even at this stage.

a) *Collaboration and Coordination*

The VCBB seeks projects that leverage existing public and private resources and assets. Please highlight any collaboration or coordination between the applicant and the following entities.

- 1) Other CUDs
- 2) Utilities serving the district. For example, have you contacted the utility regarding the make-ready tariff reduction? Are you coordinating with the utility's construction schedule to reduce costs? How many addresses in your district are eligible for the reduced tariff?
- 3) Incumbent telephone, cable providers, or another internet service provider

- 4) Other entities. This would include Libraries, Public Safety, Agency of Transportation, Housing Organizations, Local Development Districts, Regional Planning Commissions, School Districts, and other community anchor institutions.

b) Resiliency and Redundancy

Applicant shall describe steps being taken to ensure a resilient and redundant network that is interoperable with other networks and capable of support future growth.

c) Overbuilding

Applicants applying to undertake preconstruction activities involving addresses served by a wired connection of speeds of 25/3 Mbps or greater, the Applicant must explain how and why their proposed projects would be eligible for future funding to be provided by the Broadband Construction Program as outlined under the criteria outlined in Act 71 and in the Department of Treasury Guidance.

The Broadband Construction program created by Act 71 § 8086 f(2) allows the Vermont Community Broadband Board to:

"provide a grant to an eligible provider that enables the provision of broadband service in a geographic area currently served, provided that: (1) the proposed project is a cost-effective method for providing broadband service to nearby unserved and underserved locations that is capable of speeds of at least 100 Mbps download and 100 Mbps upload; (2) any overbuild is incidental to the overall objectives of the universal service plan required for funding under this Program."

d) Sustainability

A broadband project financed under the Construction Program demonstrates an economically sustainable business model that ultimately will be eligible for financing in the private or municipal bond market. What is the Applicant's strategy for acquiring additional funds necessary to support both operations and further construction?

e) Affordability

The Applicant shall describe all current efforts to ensure that any network developed will be accessible to low-income Vermonters.

Applicant should include a memo detailing materials that it requests to be held confidential by the Vermont Community Broadband Board (VCBB) and include an explanation as to why such material should be exempted from disclosure under the Vermont Public Records Act (1 V.S.A. §§ 315 et seq.). Applicant must mark all pages or sections that are covered by the exemption. For example, use bold red headers and footers on pages that should be excluded from public inspection and records requests.

Part 3: Activities and Budget

Applicant shall provide a detailed budget outlining the expect costs for each activity as described in Section 3.

	Description	Amount
1	High Level Network Design	\$NN,NNN
2	Legal Expenses for Negotiating an MOU with a provider.	\$NN,NNN
3	Project Manager	\$N,NNN
	Total	\$XXX,XX

Part 4: Detailed Project Timeline with Tasks/Milestones

Applicant shall provide a spreadsheet that outlines each task involved in completing each activity described in Section 3. The spreadsheet shall describe key milestones for each project. Progress towards completing the tasks identified must be addressed in each monthly report. Applicant is welcome to use the format below or to provide a Gantt chart.

Project	Task/Milestone	Start Date	Completion Date	Expected Construction start date (if applicable)
<i>EXAMPLE: Phase 1 Detailed Design</i>	<i>Procurement Process</i>	<i>Oct 1 2021</i>	<i>Nov 1 2021</i>	<i>May 2022</i>
	<i>Detailed Design Produced</i>	<i>Nov 15, 2021</i>	<i>Feb 15, 2021</i>	<i>May 2022</i>
	<i>Governing Board Reviews and Approves Design</i>	<i>Feb 15, 2021</i>	<i>Mar 15, 2021</i>	<i>May 2022</i>

Part 5: Additional Attachments

Applicant shall attach the following to the application package

- a) Assurances - The application packet must contain signed version the following documents. These documents are found in the appendix.
 - i. Attachment C
 - ii. State Fiscal Recovery Assurances
- b) Proof of current insurance as required in Attachment C
- c) Recent W-9 – Within 6 months of the date of the application

Deadlines

All work must be contracted within 18 months. The grantee must immediately notify the Board if there are delays beyond the grantee's control and request an extension in writing.

Performance

Successful Applicant will be obligated to provide the following:

1. Reporting Requirements:

b) Monthly

The recipient CUD will provide a detailed report on the 15th of each month following the execution of a signed grant agreement. The report must contain a narrative of accomplishments to date and specifically during the most recent report period. The report shall also detail any delays or problems, and a proposal for correcting said problems.

Progress towards completing the tasks and achieving the milestones submitted in the application pack shall be addressed in each monthly report. Below is a template.

Project	Task/Milestone	Schedule	Status	Budget Remaining

Attached to the report should be any contracts, invoices, and expenses incurred to date and an overview of expenses expected to be incurred or contracts signed during the next 30 days. All contracts expected to be signed during the next 30 days are advised to be submitted along with the report.

If the Board finds that the project has deviated from the scope of work outline that was deemed in accordance with state and federal requirements for American Rescue Plan funding, the Executive Director is empowered to issue a "stop-work" order and require immediate remediation steps be taken or that remaining funds must be returned to the grant program.

b. Interim Report and Presentation

An interim report accounting for all activities to date must be submitted on a schedule negotiated between the Board and the Applicant. This comprehensive package of materials must include the following: detailed narrative of accomplishments since the grant agreement was signed; an updated timetable for construction to commence; problems, delays, and how plans and strategy were and are to be adjusted. Recipients and their partners and contractors may be also asked to present to the Board on the progress of their effort at this time.

c. Final Report

A final report accounting for all activities to date will be required when all activities have been completed. This comprehensive package of materials must include the following: detailed narrative of accomplishments since the grant agreement was signed; an updated timetable for construction to commence; problems, delays, and how plans and strategy were and are to be adjusted. Recipients and their partners or contractors may be also asked to present to the Board on the progress of their effort at this time.

2. Contract Review

Contracts entered by a grant recipient may be subject to contract review by staff of the Board. The following items will be considered during the review of the contract. This list is not exhaustive:

- Inclusion of required State Fiscal Recovery Funds language for contracts. This language can be found at <https://finance.vermont.gov/covid-19-guidance>
 - Inclusion of all information required for reporting as outlined in the SLFRF Compliance and Reporting Guidance. The requirements can be found at <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.
 - Confirmation that the contractor was selected using a procurement policy that aligns with all state and federal requirements.
 - Inclusion of industry-accepted standards for engineering, construction, and build quality
 - Inclusions of standards for data collection
 - Inclusion of a schedule for deliverables
 - Any other issue or concern the Board believes is pertinent execution or performance of the contract.
3. Grantees are required to notify the Board in writing if they will be significantly deviating from their proposed budget or scope of work.
4. Grantees may be required to attend workshops related to design standards, grant management and oversight, and other topics.

Proposal Review and Selection

Review Criteria: Selection of the winning proposal(s) will be made based on the sole opinion of the Board that the proposal(s) submitted serve the public good of the State and the objectives of Act 71.

The Board shall consider the following when reviewing proposals:

Capabilities of the Applicant

1. Does the Applicant currently have or will have as a result of the proposal the capacity to manage the contracts and relationships necessary to construct a high-speed broadband network to all addresses in member towns of the Communication Union District?
2. Is the Applicant being advised by professionals regarding the logical next steps and overall strategy?
3. Has the Applicant presented a comprehensive overview of the Communications Union District's current capacity and expected needs over the next eighteen months?
4. Does the proposed project further increase the professionalization of the Communications Union District and their capacity to make sound decisions and successfully implement projects?
5. Has the Applicant secured an operating agreement or another type of partnership agreement with an experienced entity? If an agreement has not be secured or is not actively being negotiated, has the Applicant discussed with existing service providers serving towns that are members of the Communications Union District opportunities for collaboration?
6. Has the Applicant secured grant funding from other local, state, federal or private sources?
7. Does the Applicant have adequate financial controls or a plan to ensure the proper use of any funds provided by the Vermont Community Broadband Board?

Strategy and Process

1. Did the Applicant commit to providing service to all on-grid locations in their member towns?
2. Will this bring the Applicant closer to construction and/or a decision to form a partnership with a private partner?
3. Does the Applicant articulate a comprehensive strategy for accomplishing universal service?
4. Are the activities proposed by the Applicant consistent with the overall strategy and does the timeline properly for commencing each activity align with best practices for the phased build-out a broadband network? *The Board is not interested in prematurely funding activities that will need to be repeated at a later date.*
5. Is there evidence that the Applicant is considering other key legislative goals as outlined in Act 71 (such as affordability and resiliency) during the planning process?

The Board reserves the right to make a selection without further discussion of proposals received. Therefore, each proposal must be submitted in the most complete and accurate manner possible.

Rejection of Proposal: The Board reserves the right to reject any or all proposals and waive informalities and minor irregularities in proposals received and accept any portion of a proposal if deemed in the State's best interest in accordance with the applicable provisions of law.

Negotiations with Applicant: Upon completion of the evaluation process, the Board may select one or more Applicant with which to simultaneously negotiate grant agreements, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State of Vermont. If the Board is successful in negotiating with one or more of the Applicant, the Board will issue a notice of award. If the Board is not successful in negotiating a grant agreement with a selected Applicant, the Board reserves the option of negotiating with another Applicant or choosing not to issue an award.

Grant Award: The basis for the selection of the winning Applicant(s) will be made based on the sole opinion of the Board that the proposal(s) submitted will be in the best interest of the State and in accordance with Vermont law.

Terms and Conditions

Binding Offer: A proposal submitted in response to this grant opportunity shall constitute a binding offer until approval by the Board of a finalized agreement. Acknowledgment of this condition shall be indicated by the signature in the Transmittal Letter of the bidder or an officer of the bidder legally authorized to execute contractual obligations.

Agreement Modification: It is possible that decisions or guidance provided by the United States Treasury Board, United States Congress, or the State of Vermont may make it necessary or desirable to modify the contract. Procedures for modification will be defined in the agreement document.

Proposal Ownership: All submitted responses may be reviewed by any person after the grant agreement has been signed. The Board reserves the right to use any or all information/material presented in reply to this grant opportunity, including the right to destroy any information at the discretion of the Board. Disqualification of a bidder does not eliminate this right. Any records or information produced or acquired by the Board that are trade secrets or confidential business information shall be exempt from public inspection and copying pursuant to 1 V.S.A. § 317(c)(9).

Warranty: As a condition of delivery of the grant funds, Applicant warrants to the Board that the facts and estimates provided in its response to the CUD Pre-Construction and Capacity Building Grant Program Request for Proposals are, to the best of Applicant's knowledge, correct and true;

Funding: All Grant awards are subject to the availability of funding.

Other Terms and Conditions: Applicant will be responsible for all other terms and conditions listed in the model Grant Agreement, Attachment C: Standard state Provisions for Contracts and Grants upon execution of a grant agreement.

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 Board 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 Executive Director 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)

State Fiscal Recovery Fund Program Assurances
Issued on June 2, 2021

Effective June 2, 2021, State Fiscal Recovery Fund (SFR) recipients are required to include the below list of assurances in their SFR program applications and/or awards. Agencies and departments can add to these assurances, but please do not alter or remove any of the listed assurances without prior approval from the COVID-19 Financial Office, by emailing ADM.COVID@vermont.gov.

Unless noted otherwise, these assurances apply to all SFR grant/beneficiary programs.

An authorized signatory of [PLACEHOLDER] must attest to the following by checking the box next to the statement and signing this document.

- 1. I have the authority to request payment from the State of Vermont. I am requesting payment for costs incurred in connection with section 602 of the Social Security Act, as amended by section 9901 of the American Rescue Plan Act, Public Law No. 117-2 (March 11, 2021) ("section 602").
- 2. As required by federal law, the SFR will only be used for approved economic support or costs incurred during the period that begins on March 3, 2021 and December 31, 2024, in response to the COVID-19 public health emergency and its negative economic impacts.
- 3. [PLACEHOLDER] will report on incurred expenses and/or losses, in a form and at a frequency prescribed by the State of Vermont and will cooperate with the State of Vermont in creating and retaining appropriate documentation to demonstrate that the proposed uses meet the requirements of section 602.
- 4. To the extent that actual expenditures or demonstrated need is less than the total award amount, [PLACEHOLDER] agrees to return the balance of unspent funds to the State of Vermont. If the United States Board of the Treasury recoups funds from the State of Vermont based on a determination that these award funds were used in a manner not in compliance with section 602, [PLACEHOLDER] agrees that the State of Vermont may recover funds from [PLACEHOLDER] by reducing future funding in State budgets.
- 5. [PLACEHOLDER] must repay the award or portion of the award to the [AWARDING ENTITY] if: any funds received were issued in error; are based on incorrect representations made to the [AWARDING ENTITY]; or any costs forming the basis of an award under this Program are covered by other federal funds or federally forgiven loans received by [PLACEHOLDER]. I agree that the final determination of whether there has been a duplication of benefits and the amount to be repaid, if any, will be made by the [AWARDING ENTITY].

- 6. **[Applies only to grants to subrecipients²]** [PLACEHOLDER] has applied for FEMA-Public Assistance funding first for all FEMA-eligible expenses before applying to this grant. [PLACEHOLDER] will only use this grant to cover expenses that are not eligible for FEMA-Public Assistance reimbursement.

- 7. [PLACEHOLDER] shall maintain and make available to the State of Vermont and/or United States Board of the Treasury, upon request, all documents and financial records sufficient to establish compliance with section 602. Records and supporting documentation must be maintained for a period of five years after all funds have been expended or returned to Treasury, whichever is later. Records to support compliance with subsection 602 may include, but are not limited to, copies of the following:
 - a. General ledger and subsidiary ledgers used to account for (a) the receipt of SFR payments and (b) the disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;
 - b. Budget records;
 - c. Payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
 - d. Receipts of purchases made related to addressing the public health emergency due to COVID-19;
 - e. Contracts and subcontracts entered into using SFR payments and all documents related to such contracts;
 - f. Grant agreements and grant subaward agreements entered into using SFR payments and all documents related to such awards;
 - g. All documentation of reports, audits, and other monitoring of contractors, including subcontractors, and grant recipient and subrecipients;
 - h. All documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
 - i. All internal and external email/electronic communications related to use of SFR payments; and
 - j. All investigative files and inquiry reports involving SFR payments.

- 8. To the best of my knowledge, neither [PLACEHOLDER] nor [PLACEHOLDER]'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.

- 9. **[Applies only to subrecipient relationships¹]** [PLACEHOLDER] will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether a Single Audit is required for the prior fiscal year. If a Single Audit is required, [PLACEHOLDER] will submit a copy of the audit report to the State of Vermont within 9 months. 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.

² For assistance in determining whether the relationship between the State, and the entity receiving the funds from the State, is a subrecipient relationship, please complete the Federal Award Classification Checklist. CFO written approval is required to classify any entities as "beneficiaries" of COVID-19 relief funding.

- 10. [PLACEHOLDER] will submit reports as required by the State of Vermont, Agency of Administration, and/or [AWARDING ENTITY].
- 11. The [AWARDING ENTITY] may share the information on this federal award with other Vermont state agencies, and other Vermont agencies can share information with [AWARDING ENTITY] for the purpose of verifying [PLACEHOLDER] 's eligibility for this or another award or stimulus payment related to the COVID-19 pandemic.
- 12. All of [PLACEHOLDER] 's tax returns are completed and filed through the date of application filing.
- 13. [PLACEHOLDER] complies with local, state and federal labor laws.
- 14. [PLACEHOLDER] is in good standing with the Vermont Secretary of State.
- 15. **[Applies only to hazard grants]** Please certify the following:
 - a. [PLACEHOLDER] has established a process to permit eligible employees to elect not to receive hazard pay funded by a grant provided pursuant to the Program and record keeping procedures to track which employees have elected not to receive a grant.
 - b. [PLACEHOLDER] acknowledges and agrees that grant funds received for hazard pay will only be used to cover hazard pay for eligible employees in accordance with section 602.
- 16. **[Applies to economic support programs]** [PLACEHOLDER] has faced economic harm resulting from or exacerbated by the COVID-19 public health emergency. This award will support [PLACEHOLDER] in addressing the economic harm brought on by the COVID-19 public health emergency.
- 17. I attest, under penalty of perjury, that all information provided on this form is true and accurate. I understand that the State of Vermont will rely on this certification as a material representation in making this federal award. Further, I understand that intentional misrepresentation of information is fraud and may subject me or my organization to disqualification from receiving further benefits, administrative penalties, and criminal prosecution.
- 18. [PLACEHOLDER] understands that, if Federal guidance on the regulations of the State Fiscal Recovery Fund change, it may change the terms of this award.

Printed Name:

Authorized Signature:

Title:

Organization Name:

Date: