



**Vermont Community Broadband
Board (VCBB)**

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BROADBAND CONSTRUCTION PROGRAM REQUEST FOR PROPOSALS

ISSUE DATE: JANUARY 18, 2022 (Updated June 13, 2022)

RESPONSES WILL BE ACCEPTED ON A ROLLING BASIS

OVERVIEW

The Vermont Community Broadband Board ("Board") invites proposals from Eligible Provider for funds to finance the broadband projects that are part of a Universal Service Plan. Service providers must achieve speeds of at least 100/100 Mbps symmetrical at all on-grid underserved and unserved locations within their Universal Service Plan.

BACKGROUND

Vermont was awarded \$1.05 billion in Coronavirus State and Local Fiscal Recovery Funds (Recovery Funding) as part of the federal American Rescue Plan Act of 2021. The Governor's Recovery Plan is focused on transparent investments in key infrastructure needs, including housing, broadband, wastewater and sewer systems, climate change prevention and mitigation, and economic development. The explicit objective of this Plan is to provide long-term economic recovery opportunities to communities statewide, with a focus on those regions or counties struggling the most with job losses and declines in demographics and income levels.

In 2021, the General Assembly earmarked a total of \$150 million to Broadband. Of that \$150 million, \$116 million was dedicated to the Broadband Construction Grant Program ("Program"). In 2022, the General Assembly appropriated another \$95 million to the Vermont Community Broadband Board. A total of \$141 million is available for this program as of July 1, 2022.

As provided by Sec. 2 § 8086 of Act No. 71 ("Act 71"), which became law on June 8, 2021, the purpose of the Broadband Construction Grant Program ("Program") is to provide grants to Eligible Providers ("Providers") for construction costs related to broadband projects providing service of at least 100/100 Mbps that are a part of a Universal Service Plan and meet other criteria as specified in Act 71 as well as those criteria established by the Vermont Community Broadband 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.

DEFINITIONS AND EXPLANATIONS

"Access to Broadband" means constructing a broadband network capable of providing Internet access at speeds of at least 100/100Mbps where the broadband network passes the location, has sufficient capacity to serve the location at the required speed, and can be connected to the location if a customer contracts to receive the service.

"Eligible Provider" means: (A) a Communications Union District ("CUD"); (B) a small communications carrier; or (C) an Internet Service Provider (ISP) working in conjunction with a Communications Union District to expand broadband service to unserved and underserved locations as part of a plan to achieve universal broadband coverage in the District. *Note: Under Act 71, Municipalities are not considered eligible applicants, but are encouraged to work with a provider to apply for funding.*

"Small Communications Carrier" means: (A) a carrier that has elected to be regulated under subsection 227d(a) or (B) an Internet service provider that operates in not more than five counties.

"Universal Service Plan" means a plan for providing each on-grid unserved and underserved location in a Communications Union District or in a municipality that was not part of a Communications Union District prior to June 1, 2021 Access to Broadband service capable of speeds of at least 100 Mbps download and 100 Mbps upload.

"Underserved Location" means a location that has access to a wireline broadband connection capable of speeds of at least 4 Mbps download, 1 Mbps upload but less than 25 Mbps download and 3 Mbps upload.¹

¹ The Interim Final Rule for State and Local Recovery Funds ("IFR") defines "unserved or underserved households or businesses" to mean one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speeds and 3 Mbps of upload speeds. The IFR provides that a recipient may use Coronavirus State and Local Fiscal Recovery Funds to make investments in broadband infrastructure that are designed to provide service to unserved or underserved households or businesses. The use of "reliably" in the IFR provides recipients with significant discretion to assess whether the households and businesses in the area to be served by a project have access to wireline broadband service that can actually and consistently meet the specified thresholds of at least 25Mbps/3Mbps—i.e., to consider the actual experience of current wireline broadband customers that subscribe to services at or above the 25 Mbps/3 Mbps threshold. Whether there is a provider serving the area that advertises or otherwise claims to offer speeds that meet the 25 Mbps download and 3 Mbps upload speed thresholds is not dispositive. In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or

“Unservd Location” means a location that only has access to a reliable, wireline broadband connection capable of speeds of less than 4 Mbps download and 1 Mbps upload.

“Act 71 Compliant Business Plan” means a business plan for the proposed Universal Service Plan. For the purposes of this grant, an actionable business plan is a document that a financial institution would find sufficient basis on which to provide financial support. The business plan shall include, but is not limited to: high-level engineering and design plans, market analysis, take-rate assumptions, and as relevant, cash flow positive date, loan payoff date, financing models, pro forma financial projections, estimated construction costs, ideal operational models, and an evaluation of risks including labor needs and availability, supply-chain contingencies for equipment and materials, make-ready work, and any other relevant capital and operational expenses. This requirement applies to all eligible applicants.

“Incidental Overbuild” means overbuilding addresses in areas currently serviced by a reliable wireline connection of at least 25/3 Mbps. The Broadband Construction Program created by Act 71 § 8086 f(2) allows the Vermont CommunityBroadband 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.

In general, any overbuild of served addresses that is less than 20% of the total number of addresses passed will be considered incidental since the project is “designed to” provide service to unserved and underserved households.²³

In general, Point to Point Fiber between hubs without drops and crossing areas with access to wireline connection of at least 25/3 does not count as overbuild. This includes mainline access, trunk routing, and network hub integration enroute to or supporting delivery of service to unserved and underserved locations.

Applicants should identify all overbuild areas and explain why any overbuilding is necessary and how it is incidental to the project's overall objective. The Board will review proposed projects and consider

deterioration of the existing connections make the user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier). <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf> Item 6.11

² From FAQ - For broadband infrastructure investments, what does the requirement that infrastructure “be designed to” provide service to unserved or underserved households and businesses mean? [6/17] Designing infrastructure investments to provide service to unserved or underserved households or businesses means prioritizing deployment of infrastructure that will bring service to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed. To meet this requirement, states and localities should use funds to deploy broadband infrastructure projects whose objective is to provide service to unserved or underserved households or businesses. These unserved or underserved households or businesses do not need to be the only ones in the service area funded by the project. <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf> Item 6.8.

³ Section 60102 of the new infrastructure bill, H.R. 3684: (D) Underserved service project.--The term “underserved service project” means a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations or underserved locations.

the justification given for all overbuild.

“Vermont Community Broadband Board Outside Plant Design (OSP) Requirements” means standards developed by the Vermont Community Broadband Board as outlined in Addendum 1 (pg 28). The Requirements are also detailed at <https://publicservice.vermont.gov/content/outside-plant-design-osp-requirements>.

FUNDING AVAILABLE

The total amount of funding available will be established through the legislature. Total funding available to each Communications Union District and to towns not members of a Communications Union District⁴ will be determined by the percentage of road segments with unserved or underserved addresses and an incentive program to encourage contributions by communities’ benefiting from the proposed projects.

1. **Percentage of Roads Unserved or Underserved in the District or Town(s) -- \$195⁵**

The Vermont Department of Public Service conducted an analysis showing 18,679 total road miles in Vermont. The Department then classified all road segments by whether they have access to service from fiber or cable, and whether there are any E-911 addresses on those road segments. The resulting mileage (served or with no addresses) was subtracted from the total road mileage in each town or CUD.

For this initial launch of the Construction Program, the following percentages will guide Board decisions on the allocation of funds. The Board reserves the right to adjust this as additional information becomes available. A spreadsheet showing the town by town breakdown is available at <https://publicservice.vermont.gov/content/cud-and-town-town-breakdown-act71-construction-grant-program>.

⁴ The current map of Communications Union Districts is available at <https://publicservice.vermont.gov/content/vermont-communications-union-districts>

⁵ The chart shows appropriations from the ARPA SFR (\$150M) and APRA Capital Funds (\$95M). An additional \$100M+ from the Infrastructure Investment and Jobs Act (IIJA) is expected and not included in the chart above.

CUD Construction Grant Total Amounts - Updated June 2022

Eligible Applicant Service Area	Roads No Cable/ Fiber	% Roads No Cable/ Fiber*	Town Matching Program (\$16M)	ARPA and ARPA Capital (\$195M)	Total Available (\$211M)
CVFiber	688.65	9.38%	\$1,500,658	\$18,289,273	\$19,789,932
DVFiber	785.95	10.70%	\$1,712,689	\$20,873,399	\$22,586,088
ECFiber	460.30	6.27%	\$1,003,045	\$12,224,612	\$13,227,657
Lamoille FiberNet	472.86	6.44%	\$1,030,418	\$12,558,218	\$13,588,636
Maple Broadband	703.12	9.58%	\$1,532,198	\$18,673,667	\$20,205,865
NEK Broadband	2,273.06	30.96%	\$4,953,280	\$60,368,105	\$65,321,386
Northwest Fiberworx	703.62	9.58%	\$1,533,269	\$18,686,710	\$20,219,979
Otter Creek	346.98	4.73%	\$756,125	\$9,215,268	\$9,971,393
Southern Vermont	318.74	4.34%	\$694,565	\$8,465,007	\$9,159,571
No CUD	589.11	8.02%	\$1,283,753	\$15,645,741	\$16,929,494
Totals	7342.39	100.00%	\$16,000,000	\$195,000,000	\$211,000,000

Based on PSD Service by Road Mileage with no Fiber or Cable

Towns sharing a CUD were adjusted based on the actual share of town or 50/50 split

Total amount based on \$116M from ARPA SFR and \$95M from ARPA Capital Projects

The chart above does not reflect grants already issued to NEK Broadband and the Town of Bolton/WCVT

This formula is subject to change based on new data and is for information purposes only. The percentage of underserved roads, representing the percentage of grant allocation, in a town not a member of a CUD at the time this RFP is posted shall be allocated to any CUD that a town joins.

The formula will also provide guidance when analyzing proposed projects in individual towns in Non-CUD areas. A spreadsheet and a map showing the allocations per town can be found at <https://publicservice.vermont.gov/content/act-71-broadband-construction-grant-program>

Subsequent appropriations may be added to this program.

2. Community Match: The Board will match town contributions of State Fiscal Recovery Funds allocated on a first-come, first-serve basis, up to a total of \$16 Million

The total amount that a single Communications Union District or towns not a member of a Communications Union District will receive from the pool of money is equal to the percentage allowed under the unserved and underserved road miles formula detailed above. This funding will be distributed on a first-come, first-serve basis. The maximum allocation per Eligible Provider is the same percentage allocated to the CUD or non-CUD towns under section 1. This additional pool of funds is to incentivize communities to contribute additional funds. A letter of commitment must be included in the grant application from the municipality providing the matching funds. The letter must state the amount of funds either contributed to the CUD or Eligible Provider and detail the intended use of the funds by the CUD or Eligible Provider, or the project to be administered by the town in support of the broadband construction project. Towns may deploy the funds directly, transfer the funds to the

Eligible Provider, or transfer the funds to the Vermont Community Broadband Board.⁶

Funds not matched by September 15, 2022 will be returned to the funding pool allocated by unserved and underserved road miles. All remaining funds will be restored to the CUDs or non-CUD towns based on the percentages above, with any monies already received by the CUD or non-CUD towns through this program subtracted from their total (e.g., the total amount received by each CUD through the matching program and remaining funds should be based on the percentages above).

RFP OVERVIEW

The Board seeks proposals from Eligible Providers to provide Access to Broadband to Unserved Locations and Underserved Locations included in a Universal Service Plan. The Board has identified each Unserved and Underserved Location by street address and its E-911 site ID number. These locations are listed in the following spreadsheet: <https://publicservice.vermont.gov/content/2022-act-71-construction-grant-program-eligible-locations-updated-5-19-220> and the shown on the following map: <https://experience.arcgis.com/experience/4a4f2662978b48238be5915ce9c7a68f/>.

The Applicant will be required to take whatever steps are necessary to provide Access to Broadband to serve these locations proposed as part of the RFP with broadband Internet access at speeds of at least 100/100Mbps. The Applicant will be required to complete construction and offer service to those locations within twenty-four (24) months of approval of the Application or other timeframe specifically enumerated in the RFP, absent force majeure.

The Applicant is committing to provide Access to Broadband to all Unserved Locations and Underserved Locations that currently receive electric service in the network area it proposes to build in the RFP application as part of its overall Universal Service Plan for a Communications Union District or a non-CUD town that is eligible for funds under Act 71.

The Board will award up to the maximum amount to each Applicant as determined by the underserved mileage formula plus any matching funds. At the Board's discretion, unawarded pre-construction funds allocated but not awarded to a Communications Union District may be added to the total amount available via this Program.

Applicants shall be subject to transparency and reporting requirements including, but not limited to, reporting, tracking, and documentation of incurred costs, and access to records in accordance with the State of Vermont Agency of Administration's Bulletin No. 5 ("Bulletin 5"), available at https://aoa.vermont.gov/sites/aoa/files/Bulletins/Bulletin_5_eff12-26-14.pdf.

Communication Regarding this RFP: All communications concerning this RFP should be sent by email

⁶ According to the Final SFLR Treasury Guidance, Recipients may undertake projects on their own or through subrecipients, which carry out eligible uses on behalf of a recipient, including pooling funds with other recipients or blending and braiding SLFRF funds with other sources of funds. Localities may also transfer their funds to the State through section 603(c)(4), which will decrease the locality's award and increase the State award amounts. Please contact the VCBB if a town plans to pursue this option.

to vcbb.grants@vermont.gov. Applicants who have questions concerning the substance of the RFP should follow the RFP Timetable below. All submitted questions will be distributed, along with answers from the Board, to all who have submitted a notice of intent or Eligibility Screening Pre-Proposal to the Board and posted to the Board's website.

The Board reserves the right to revise any part of this RFP at any time. The Board will post any changes to its website. It is the responsibility of the Applicant to check the Board's website for revisions to the RFP.

Notice of Intent to Respond: Applicants are encouraged to notify the Board of their intent to respond to this RFP by sending an email with a subject of "Intent to Respond: RFP – Act 71 Construction – Town/CUD" to vcbb.grants@vermont.gov. The Notice of Intent to Respond must provide full contact info and information on the proposed service area (town or Communications Union District) to which the Applicant will be proposing a Universal Service Plan. At the Applicant's discretion, the Applicant may also submit the Eligibility Screening Pre-Proposal at this time in lieu of the Notice of Intent to Respond.

Questions: Upon submission of Notice of Intent, the Applicant is permitted to submit questions related to the RFP. The questions and answers will be posted to the VCBB website. It is the obligation of Applicants to check the Board's website for updates and changes.⁷

Pre-Proposal Submission: Proposals will be accepted on a rolling basis. Eligibility decisions will be made by the Staff within five (5) business days in most cases; however, in some instances, the Staff may request further information before making an eligibility decision, and it will make such a request within five (5) business days. Review of an invited proposal will be made at a future Vermont Community Broadband Board Meeting. Eligibility proposals must be submitted via a secure online form. Applicants should email vcbb.grants@vermont.gov to receive a unique login. Upon invitation for a Full Proposal, an Applicant may be provided with a unique login to be used for uploading RFP materials. It is the responsibility of the Applicant to assure delivery of proposal(s) on or before the applicable due date and time.

Oral Presentations/Questions/Site Visits: Applicants may be asked to answer written questions in advance of the Board Meeting, make oral presentations to the Board, and/or to make their facilities available for a site inspection by the Board. Any clarifications to an application resulting from these sessions will be in writing and will be incorporated in the application. Applicants are expected to attend (which may include attending in-person or remotely depending on applicable protocols at the time) the Board Meeting(s) where the Application will be deliberated by the Board.

Other Considerations: The Board reserves the right to conduct additional research into the Applicant before deciding on an application. This may include consultations with the Public Service Board, Public Utilities Commission, and leaders and residents of communities in which the Applicant currently provides or proposes to provide service. The Board also reserves the right to work directly

⁷ Answers to questions submitted will be posted at <https://publicservice.vermont.gov/content/broadband-construction-grant-program-frequently-asks-questions>.

with applicants to revise submitted materials to better achieve the goals of the state.

Timeline: To be reviewed, an Application must be submitted at least 10 business days before the Board Meeting.

Term of Agreement: Any agreement resulting from this RFP will be for a term of six (6) years to commence on the execution of an agreement between the Applicant and Board that shall be in accordance with [State of Vermont Agency of Administration Bulletin No. 5](#).

Any work an Applicant begins on its proposed project prior to execution of a grant agreement is at the Applicant's risk. Construction of the project must be completed within 24 months of execution of the grant agreement or other time specifically enumerated in the grant agreement, absent force majeure.

ELIGIBILITY

The Board will only consider applicants and projects that mean the following conditions:

- (A) Applicant is an "Eligible Provider."
- (B) Applicant has produced and shared a Universal Service Plan. This plan must detail the Eligible Providers approach for providing service to Access to Broadband to every Unserved Location and Underserved Location with electric utility service in a Town or Communications Union District. The approach may be phased and must contain binding commitments to provide or cause to be provided Access to Broadband to every Unserved Location and Underserved Location with electric utility service in a Town or Communications Union District.
- (C) Construction needs to be completed within 24 months or other time specifically enumerated in the grant agreement, absent force majeure.
- (D) Applicant has a viable business plan for its proposed project, which takes into consideration network engineering and design, labor needs and availability, supply-chain contingencies for equipment and materials, make-ready work, and any other relevant capital and operational expenses.
- (E) The proposed project does not conflict with or undermine the Universal Service Plan of an existing Communications Union District. If a non-CUD eligible applicant is applying to provide service to a member town in a Communications Union District, a letter of collaboration from the Communications Union District(s) must be included in the application package.⁸ The Board reserves the right to offer consideration of projects without such letters upon notice to the affected CUD, but it is the responsibility of the Applicant to justify how the proposed project does not undermine or conflict with the Universal Service Plan of an existing Communications Union District. The Board reserves the options to review or dismiss such applications.
- (F) The proposed project only involves Incidental Overbuild of addresses currently served by a

⁸ Act 71 prohibits the Board from awarding a grant to an eligible provider who is not a communications union district unless the Board determines that the provider's Universal Service Plan does not conflict with or undermine the universal service plan of an existing communications union district.

physical connection of at least 25/3.

- (G) All projects must adopt an industry-accepted engineering standard that promotes network reliability, resiliency, and interoperability. All projects must also follow the design standards set by the Vermont Community Broadband Board Outside Plant Design (OSP) Requirements. The Applicant must certify its willingness to follow the guidelines. Final designs are subject to review by an independent engineer contracted through the Board.
- (H) All projects must provide broadband service that complies with the consumer protection and net neutrality standards established by the State.
- (I) The Applicant must agree to provisions contained in Act 71 or Act 71 as may be amended.⁹
- (J) The Applicant must agree to follow the applicable Treasury Guidance on the eligible uses and other guidance related to the American Rescue Plan State and Local Fiscal Recovery Funds. In cases of conflicting legal opinions, the opinion of the State Vermont Department of Finance and Management and the State's consultants shall take precedence. Failure to follow the guidance may result in a suspending the agreement or disallowing an expense.¹⁰

PROJECT PRIORITIZATION

Upon the determination that the Applicant is eligible for consideration, the Board shall give priority to broadband projects and applicants that:

- (A) Leverage existing other resources and assets.
- (B) Demonstrate project readiness and community support.
- (C) Support low-income or disadvantaged communities.
- (D) Promote geographic diversity of fund allocations.
- (E) Provide consumers with affordable service options and/or commit to participate in a program that supports low-income consumers.
- (F) Include public broadband assets that can be shared by multiple service providers and that can support a variety of public purposes.
- (G) Provide a network design that is scalable, addresses redundancy and will result in high reliability and resiliency.

APPLICATION PROCESS OVERVIEW

The application requirements for this Program as set by Act 71 are substantial. To ensure that no potential applicant expends extensive resources in developing a project that is not considered as a result of the nonconformance to criteria and requirements set forth in Act 71, the Board has as established a two-step process:

1) Eligibility Screening Pre-Proposal - Staff will review the materials submitted for eligibility and

⁹ Please see <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT071/ACT071%20As%20Enacted.pdf>

¹⁰ Please review the rules and FAQ at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

invite proposals from each applicant whose proposed Universal Service Plan is deemed eligible. Staff may determine that all, some, or none of the areas in the Universal Service Plan are eligible. If a Universal Service Plan and the Applicant are deemed eligible, the Applicant need not submit additional prescreening materials for subsequent projects within the same Universal Service Plan.

2) Full Proposals by Invitation Only - Full proposals will be accepted by invitation only. The Applicant will have the option to decide between two paths. The first “Conventional” Path is a bid for service where payment is provided upon completion of the project. The second option, “Phased Approach” is for applicants that desire a more collaborative approach with additional oversight in exchange for performance payments.

Conventional	Phased
Open to All Eligible Applicants	Open to Eligible Applicants Constructing Publicly Owned Infrastructure
Requires “Not to Exceed” Price	Requires “Estimated” Cost
Payment once the network is certified as complete. Payment shall not exceed the “Not to Exceed” Price.	Performance payments in exchange for additional accountability and transparency steps to be negotiated in the grant agreement.
All documentation provided in Full Proposal	Iterative process to ensure network and retail services offered comply with Act 71 requirements.
Detailed Design Certified by Principal Engineer to be compliant with VCBB Outside Plan Design Requirements due 120 days following grant execution. Failure to do so will result in possible forfeiture of the award.	Iterative process among Applicant, VCBB Staff and Contractors to ensure detailed design meets all VCBB Outside Plant Design Requirements.
Quarterly Progress Reports	Monthly Reporting
Submission of “As Built” Plans and On-Site Inspection Required for final release of funds.	Submission of “As Built” Plans and On-Site Inspection Required for final release of funds.
If Applicant offers a staged approach to building out the entire Universal Service Plan, the Applicant may seek reimbursement at intervals to be negotiated in the Grant Agreement, based on meeting certain performance metrics with the Board.	

STEP 1: PRE-PROPOSAL ELIGIBILITY SCREENING

To be invited to submit a full proposal, Applicants shall provide the following via the online form provided to qualified applicants. Proposals will be evaluated based on meeting the basic eligibility requirements, the ability of the provider to perform the necessary work, estimated cost, and the appropriateness of the project towards advancing the goal of providing universal services.

Eligibility Screening Part 1: Transmittal Letter

1. Official name and full contact information for the Applicant and any collaborators:

- a. Communications Union Districts – The name, main office address, and a complete contact info.
- b. Other Eligible Applicants -- If an Applicant is owned or controlled by a parent company, the name, main office address, and parent company's tax identification number shall be provided in the proposal. If an Applicant company is independently owned, the name, main office address, and tax identification number of the Applicant company shall be provided in the proposal(s).

Eligibility Screening Part 2: Applicant Certification

Applicant Certification: Applicant shall certify in writing it understands that the following conditions will apply to any project funded by the VCBB Construction Grant Program:

1. *Each person signing a proposal certifies that he or she 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, and will not participate, in any action contrary to the non-collusion requirements of this RFP.*
2. *Each person signing the proposal certifies that all information in the proposal is accurate to the best of his or her knowledge.*
3. *Each person signing the proposal certifies that the Applicant organization has a Universal Service Plan for the entire town or Communications Union District in which the project will serve. Each person signing acknowledges that the Universal Service commitment is binding and that while plans may be revised, a failure to provide Access to Broadband to every Unserved Location and Underserved Location with electric utility service in a Town or Communications Union District may result in a forfeiture of assets built using funds received as a result of this Application.*
4. *Each person signing the proposal certifies that the Applicant organization will comply with the Vermont Community Broadband Board Outside Plant Design (OSP) Requirements.*
5. *Each person signing the proposal certifies that the project when completed will offer broadband service that complies with consumer protection and net neutrality standards as defined in 3 V.S.A. § 348.*
6. *Each person signing the proposal certified that the sale or transfer of any project funded by the Vermont Community Broadband Fund is prohibited without the prior written approval from the Board.*
7. *Each person signing the proposal affirms that the final network will be reviewed by the VCBB before the project is deemed complete and final payment is made.*
8. *Each person signing the proposal agrees to follow the applicable Treasury Guidance on the allowable uses and requirements for usage of American Rescue Plan State and Local Fiscal Recovery Funds, including affordability requirements. In cases of conflicting legal opinions, the opinion of the State Vermont Department of Finance and Management and the State's consultants shall take precedence. Failure to follow the guidance may result in a suspension of the agreement or disallowing an expense.*
9. *Each person signing the proposal certifies they have reviewed the following documents:*

[Attachment C, STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT \(Construction\) for all Contracts and Purchases of Products and Services Connected with 2020 Pandemic, Applicability of Federal Requirements to Vermont State Fiscal Recovery Fund Projects, and State Fiscal Recovery Program Assurances v5.](#)

Eligibility Screening Part 3: General Information

1. Responding Applicant and Brief History of the Applicant and Partners

- a. Applicant shall provide a brief history. The history should include maps detailing where the company currently provides service or the towns that are included in the Communications Union District.
- b. Applicant shall indicate its experience and/or its partner(s)'s experience provisioning broadband Internet to residential and business customers. Applicant should be able to demonstrate a history of deploying broadband technologies in rural or other hard-to-serve areas.

2. Business Plan and Financial History

- a. Applicants shall certify they have a compliant business plan. If the Applicant does not have a business plan compliant with Act 71 at this time, the Applicant must describe the business model and steps that will be taken to develop such a plan. The plan will be required if the Applicant is invited to submit a full application.

Act 71 § 8086(d) requires the Board to “determine that the applicant has produced a viable business plan for its proposed broadband project, which takes into consideration network engineering and design, labor needs and availability, supply-chain contingencies for equipment and materials, make-ready work, and any other relevant capital and operational expenses.”

- b. The Board reserves the right to require the submission of an Applicant's financial information before inviting a proposal.

3. Preferred Application Process

The Applicant shall state its preferred application path:

- a. **Conventional:** The conventional grant program requires the submission of extensive materials and a not to exceed price. Grantee is reimbursed for total incurred costs up to the “not to exceed” price once the project is completed and the final built design is signed off on by the Board.
- b. **Phased:** The phased approach requires an applicant interested in engaging in a collaborative and iterative process with the Board for projects that will result in publicly owned infrastructure. In exchange for performance payments, Grantee will share plans, including detailed design and provide the opportunity for input from Board-designated experts.

Eligibility Screening Part 4: Proposed Universal Service Plan Area(s)

1. Proposed Service Area

- a. Applicant shall detail the town(s) in which it proposes providing universal service to all on grid unserved and underserved addresses.
- b. If the Applicant is unable to directly provide service to some addresses, the applicant must explain why and how those addresses will be served.
- c. Applicant shall provide a map showing current coverage in the proposed Universal Service Plan area and the total number of underserved addresses.
- d. Applicant shall describe who will own the resulting infrastructure.
- e. If the Applicant is proposing to serve a town currently a member of a Communications Union District, the provider shall explain the relationship with the Communications Union District. Letters of support confirming the support of the Communications Union District are encouraged.

According to Act 71, § 8086(e) The Board shall not award a grant to an eligible provider who is not a Communications Union District unless the Board determines that the provider's Universal Service Plan does not conflict with or undermine the Universal Service Plan of an existing Communications Union District.

If the Applicant has no formal relationship with the Communications Union District, it is the responsibility of the Applicant to convince the Board that a full proposal should be invited. An Applicant seeking funding for a project in a Communications Union District should provide the following information at a minimum:

- i. Whether the town a) was a member of the Communications Union District as of June 1, 2021; b) became a member of the Communications Union District after June 1, 2021; or c) is not a member of the Communications Union District.
- ii. An overview of the Applicant's relationship with the Communications Union District. The Board will consider whether the Applicant replied to RFPs and/or made a substantial attempt to forge a partnership, and any reasons why a partnership was not formed.
- iii. Why the proposed project will not conflict or undermine the business plan of the Communications Union District.
- iv. Why it is in the best interest of the State to consider a full proposal.

The Staff will advise each CUD of the contents of any proposal to provide service within the CUDs' municipal borders and will rely on written testimony from each affected CUD regarding the likely impact of the Applicant's proposal on the CUD's business plan. The Staff shall make the decision whether the Applicant complies with this requirement of

Act 71, § 8086(e). A potential Applicant not invited to submit a full proposal because of this clause may appeal this determination to the VCBB Board.

A CUD impacted by a Staff decision to permit the Applicant to submit a full proposal may appeal that decision to the Board. The Vermont Communications Union Districts Association (“VCUDA”) or other CUDs may submit material that may further inform the Board’s decision.

2. Estimated Cost for Universal Service Plan Area

Applicants must be able to provide a total estimate for serving the proposed Universal Service Plan area. The Applicant should describe how the estimate was arrived upon and the factors that will influence the final cost to serve the proposed Universal Service Plan area. Included in the cost estimate will be the number of Underserved Locations and Unserved Locations to which service will be offered.

3. Other Funding Sources for the Project

Applicant should detail any additional financial support reasonably anticipated to be provided to the proposed Universal Service Plan area. This includes any federal grants or contracts; contributions from communities to be served; or private capital to be invested by the Applicant.

4. Community Engagement

Applicant shall detail all efforts to engage the local municipality or region subject to the potential grant proposal.

STEP 2: FULL PROPOSAL (BY INVITATION ONLY)

In response to this RFP, each Applicant that is invited to make a full proposal will be required to submit a proposal organized into the sections as outlined below.

The information required for the full proposal builds off the submission in the Eligibility Screening Phase. Applicants are encouraged to read each section carefully for additional information required in this phase and to further elaborate on previous answers. Applicants shall also respond to any questions posed in the invitation for a full proposal. The full proposal requests information regarding the specific project phase of the Universal Service Plan for which the Applicant is requesting funding and additional information related to other design and process concerns per Act 71.

Applicants shall refer to the following chart to determine which questions must be answered and answer those questions as outlined below.

Applications Steps	Conventional	Phased
Part 1 – Transmittal Letter and Proposal Overview	Required	Required
Part 2 – Applicant Certification	Required	Required
Part 2 – General Information	Required	Required
Part 3 – Proposed Universal Service Plan area	Required	Required
Part 4 - Project Description	Required	Questions 1, 2, 3, 5 are required at this time.
Part 5: Act 71 Considerations	Required with supporting information	Required
Part 6: Attachments	Required	Required

Full Proposal Part 1: Transmittal Letter and Proposal Overview

1. Official name and full contact information for the Applicant and any collaborators
 - a. *Communications Union Districts* – The name, main office address, and complete contact information. A Communications Union District must also detail the vendor partner(s) with which it has contracted to manage design, construction, operation, and provision of Internet Services.
 - b. *Other Eligible Applicant* -- If an Applicant is owned or controlled by a parent company, the name, main office address, and parent company’s tax identification number shall be provided in the proposal. If an Applicant company is independently owned, the name, main office address, and tax identification number of the Applicant company shall be provided in the proposal(s). If the Applicant is proposing to serve a town currently a member of a Communications Union District, the provider must explain the relationship with the Communications Union District.
2. Dun & Bradstreet D-U-N-S Number (DUNS #) and System for Award Management Number (SAM #)
3. Preferred Application Process
4. Total Estimated Cost to Complete the Universal Service Plan
5. “Not to Exceed” or “Estimated Cost” for the Universal Service Plan project to be completed in the next 24 months (or in a 24 month period)
6. Amount of Community Match secured and an overview of any other funds to be contributed to the project.

Full Proposal Part 2: Applicant Certification

Applicant Certification: Applicant shall certify in writing acceptance of the following conditions:

1. *Each person signing a proposal certifies that he or she 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, and will not participate, in any action contrary to the*

- non-collusion requirements of this RFP.*
2. *Each person signing the proposal certifies that all information in the proposal is accurate to the best of his or her knowledge.*
 3. *Each person signing the proposal certifies that the Applicant organization has a Universal Service Plan for the entire town or Communication District in which the project will serve. Each person signing acknowledges that the Universal Service commitment is binding and that while plans may be revised, a failure to provide Access to Broadband to every Unserved Location and Underserved Location with electric utility service in a Town or Communications Union District within the timeline the Applicant specifically enumerated in its Application other than as a result of force majeure may result in a forfeiture of assets built using funds received as a result of this Application.*
 4. *Each person signing the proposal certifies that the Applicant organization will comply with the Vermont Community Broadband Board Outside Plant Design (OSP) Requirements.*
 5. *Each person signing the proposal certifies that the project when completed will offer broadband service that complies with consumer protection and net neutrality standards.*
 6. *Each person signing the proposal certified that the sale or transfer of any project funded by the Vermont Community Broadband Fund is prohibited without the prior written approval from the Board.*
 7. *Each person signing the proposal affirms that the final network will be reviewed by the VCBB before the project is deemed complete and final payment is made.*
 8. *Each person signing the proposal agrees to follow the applicable Treasury Guidance on the allowable uses and requirements for usage of American Rescue Plan State and Local Fiscal Recovery Funds, including affordability requirements. In cases of conflicting legal opinions, the opinion of the State of Vermont Department of Finance and Management and the State's consultants shall take precedence. Failure to follow the guidance may result in a suspension of the agreement or disallowing an expense.*
 9. *Each person signing the proposal certifies they have reviewed the following documents: [Attachment C, STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT \(Construction\) for all Contracts and Purchases of Products and Services Connected with 2020 Pandemic, Applicability of Federal Requirements to Vermont State Fiscal Recovery Fund Projects, and State Fiscal Recovery Program Assurances v5.](#)*

Full Proposal Part 2: General Information

1. Subcontractors

Planned use of subcontractors shall be clearly explained in the proposal(s), including terms of any subcontract. Applicants must include a copy of any proposed subcontract(s) with the proposal(s), if available. All subcontracts must comply with the certification requirements above. The Applicant(s) shall be responsible for all contract performance, whether or not subcontractors are used. The Applicant will be the sole point of contact with the Board regarding the contract, including subcontracted work.

2. Business Plan and Other Financial Information

- a. A completed Act 71 Compliant Business Plan is required.
- b. The Board reserves the right to require the submission of additional financial information as part of the full Application or during the subsequent review of

applications submitted.

Full Proposal Part 3: Proposed Universal Service Plan

1. Proposed Universal Service Plan

- a. Applicant shall detail the town(s) in which it proposes providing universal service. This includes describing the demographics, including the overall density of the underserved areas and whether the area includes any Qualified Census Blocks and Difficult Development Areas.¹¹
- b. Applicant shall provide a map showing current coverage in the proposed Universal Service Plan and the total number of Unserved Locations and Underserved Locations.
- c. Applicant shall describe who will own the resulting infrastructure. If the Applicant is proposing to serve a town currently a member of a Communications Union District, the provider shall provide a letter of support from the District and documentation explaining the relationship.

2. Universal Service Plan

Successful Applicants will provide a Universal Service Plan to provide directly or cause to provide 100/100 Mbps service to all Unserved Locations and Underserved Locations with electric utility service.

- a. Applicants providing direct service to all locations should present a phased approach for serving all locations in the town(s) or Communications Union District.
- b. Applicants not serving all locations directly shall explain how Access to Broadband to all other Unserved Locations and Underserved Locations with electric utility service will be served.
- c. Applicants shall provide an overview of obstacles to providing Access to Broadband to all other Unserved locations and Underserved Locations with electric utility service.
- d. Applicant may submit commitment letters from other providers if applicable.
- e. Preference will be given to Applicants submitting joint applications covering an entire community within the allowable timeframe.
- f. Applicants shall provide a timeline for achieving universal service.
- g. If the project requires multiple phases and will take more than two years to complete, the Applicant shall provide a timeline showing each phase.
- h. Applicants should attach any documents supporting their commitment to universal service.

3. Estimated Total Cost to Serve All Unserved and Underserved Address in Universal Service Plan Area

The Applicant must be able to provide a total cost estimate for Access to Broadband to every Unserved Location and Underserved Location with electric utility service in the area

¹¹ See Qualified Census Tracts and Difficult Development Areas: <https://www.huduser.gov/portal/datasets/qct.html>

encompassed by the Applicant's Universal Service Plan, including the number of such locations. The Applicant should describe how the estimate was arrived upon and factors that will influence the final cost to serve the entire Universal Service Plan.

4. *Other Funding Sources for the Plan*

Applicant shall detail any known or reasonably anticipated additional financial support to be provided to this Universal Service Plan. This includes any federal grants or contracts; contributions from communities to be served; or private capital to be invested by the Applicant.

5. *Community Engagement*

Applicant shall detail all efforts to engage the local municipality or region subject to the grant proposal.

Full Proposal Part 4: Project Description

The Project description must contain the following information:

1. *Eligible Locations to Be Served:* Each proposal should identify all locations, underserved or otherwise, that the Applicant intends to serve in this phase of construction and the expected "in-service date."
2. *Not to Exceed or Estimated Price:* For "Conventional" Applications, Applicant shall provide a total, "not-to-exceed," turn-key price for the proposed project. Applicants choosing the "Phased" approach shall provide an Estimate. This figure shall describe if the price of drops is included in the Application. These take-rate assumptions shall be included in the grant application. To prioritize network construction, the amount dedicated to drops should be consistent with the requirements of the feasibility plan. Applicants are encouraged to request funds from communities to pay for drops to residents.
3. *Timeline:* While the proposed funding should be for a specific project of the Universal Service Plan (unless the project can be completed in a single phase in the next 24 months), the proposal should detail the timeline for this project and additional phases of the Universal Service Plan.
4. *Retail Pricing:* If available, each proposal should list all proposed retail prices for service. Prices shall include additional fees (such as equipment rentals) that could be assessed against consumer accounts. If the Applicant provides symmetrical service elsewhere and the pricing proposed exceeds that price, the Applicant shall describe the factors that contributed to any cost increases.

If the Applicant has yet to determine pricing, the Applicant shall detail how pricing will be determined and demonstrate to the Board that the resulting network will be economically self-sufficient over the long haul, incorporating plans for ongoing maintenance, upgrades, replacement in addition to paying market wages to a staff sufficient for operating the network.

5. *Additional Services:* Each proposal should describe what, if any, additional services will be

offered using the facilities deployed through the proposed project (e.g. voice, video, etc.)

6. *Detailed Project Budget* - Applicant shall provide a detailed budget outlining line-item estimates for each activity.
7. *Network Performance and Monitoring* - Applicants shall describe a plan for monitoring, identifying, and responding to issues related to the management of the links between network head-ends, devices, and users. The purpose of such a plan is to identify congestion, maximize throughput, and improve network performance.
8. *Other Information*: Any information the Applicant deems relevant to demonstrate the technical, financial, and economic feasibility of the project and the qualifications and capabilities of the project team.

Full Proposal Part 5: Act 71 Considerations

Act 71 requires the Board to evaluate how proposed projects address a variety of issues when reviewing Construction Grant proposals. Please explain how your proposal addresses the following concerns.

1. Collaboration and Coordination

The VCBB seeks projects that leverage existing public and private resources and assets. Please highlight any collaboration or coordination and attach documentation, including a summary of any agreements demonstrating collaboration with the following entities:

- a. Other CUDs or municipalities that were not part of a CUD on June 1, 2021.
- b. Utilities serving the area of the Universal Service Plan. 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?
- c. Incumbent telephone, cable providers, or another Internet service provider
- d. 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.

2. Resiliency and Redundancy

Applicant shall describe steps being taken, as well as plan to provide interconnection locations, to ensure a resilient and redundant network that is interoperable with other networks and capable of supporting future growth. Comply with Outside Plant Requirements (OSP).

3. Incidental Overbuild

Applicants must provide the percentage of addresses to be served by this project that already have access to a reliable wire-line connection that reliably achieves speeds of at least 25/3 Mbps. Applicants should explain why any overbuild is necessary and how it is incidental to the overall objective of the project.

Point-to-Point Fiber between hubs without drops and crossing areas with access to wireline connection of at least 25/3 does not count as overbuild.

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.

As a rule, any overbuild of served addresses that is less than 20% of the total number of addresses passed will be considered incidental since the project is “designed to” provide service to unserved and underserved households.

4. Sustainability

Applicant shall describe in detail how it plans to fulfil its Universal Service Plan within the required timeframe. Applicant shall describe all other sources of funding known or reasonably expected, and their status. How will this grant if approved increase your long-term network and business sustainability? Please describe how this grant is consistent with your existing business plan.

5. Affordability

Applicant shall certify they are participating or planning to participate in the Communications Commission’s Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

6. Technical and Security Approach

- a. How the project plans to operate the network, including tools, or techniques in a manner that ensure reliable communications.
- b. How the project plans to assess operational performance of the proposed network, including tools, and techniques and use the results of this assessment to optimize the way the services are delivered, and the network is operated.
- c. A summary of the information exchange interfaces for communicating devices and systems (i.e., their points of connection with other elements of the system).
- d. A summary of how the project will provide openly available and proprietary aspects of the interface specifications, and how existing (legacy) communicating devices or systems will be integrated into the project.

- e. A summary of how the project will address response to failure and device upgrade scenarios, such that overall system impact is mitigated.
- f. A summary of how the project will support compatibility with cyber security framework for standards and protocols (I recommend NIST)
- g. A summary of the cyber security risks and how they will be mitigated (focusing on vulnerabilities and impact).
- h. A summary of the cyber security criteria utilized for vendor and device selection.
- i. A summary of the relevant cyber security standards and/or best practices that will be followed.
- j. A summary of how the project will support emerging cyber security standards.

Full Proposal Part 6: Attachments

1. *Act 71 Compliant Business Plan*

2. *Letters of Support*

Non-CUD applicants are required to include letters of support from municipality to be served.

3. *Documentation of Any Commitment of Community Matching Funds*

A letter of commitment is required from the municipality providing the matching funds. The letter must state the amount of funds either contributed to the CUD or Eligible Provider and detail the intended use of the funds by the CUD or Eligible Provider, or the project to be administered by the town in support of the broadband construction project.

4. *Response to Service Quality Complaints*

The Applicant is advised that the Board may review complaints and service quality investigations involving the proposed service provider. The Applicant should be prepared to explain why it believes those complaints and/or investigations are no longer issues and describe its level of confidence in the provider.

5. *Operating Agreements and Other Partnership Agreements*

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.

6. *Maps, Spreadsheets and High-Level Network Design*

Applicant is required to provide a map, including a link to the GIS shapefile, and accompanying spreadsheet showing the project addresses, E-Site IDs, current level of service, and expected date that service will be available. The Applicant will be given directions on where to upload project information upon the extension of an invitation to submit a full application.

7. *Requests for Confidentiality*

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 redheaders and footers on pages that should be excluded from public inspection and records requests.

PERFORMANCE

The Applicant will be obligated to take whatever steps are necessary, including constructing, leasing, or purchasing facilities, to extend service to every location identified in the grant agreement.

Conventional Applications - Submission of Detailed Design

Within one-hundred-twenty (120) days of execution of a grant agreement, Applicant choosing the “conventional” path must provide the Detailed Project Plans to the Board. The Principal Engineer must certify that plans are in full compliance with the Vermont Community Broadband Outside Plant Design Requirements. The plans will be subject for review by the Board’s contracted Fiber Optics Engineer. Any construction occurring before the Detailed Design is accepted is at the Grantees own risk. A failure to submit a design within the allotted time may result in the cancelation of the grant award.

Phased Approach Applications – Submission of Detailed Design

Applicants pursuing the “phased” approach will negotiate a timeline with the Board for the various performance reviews required in exchange for access to funds. This includes a timeline for the formal, iterative process to ensure that the Detailed Design meets all Outside Plant Standards. This timeline will be negotiated with the Applicant and included in the grant agreement. A failure to agree on a timeline will result in the cancellation of the grant award.

Progress Reports

Applicants pursuing the “Conventional” Path will be required to file quarterly progress reports consistent with the grant agreement and state and federal requirements. Once construction reaches the point of providing service, Applicants shall provide a minimum of bi-weekly updates detailing the addresses that now have access to service via a system established by the Board and detailed in the grant agreement.

Applicants pursuing the “Phased” Path will be required to file monthly reports and meet other performance requirements to be outlined in the grant agreement. Once construction reaches the point of providing service, Applicants shall provide a minimum of bi-weekly updates detailing the addresses that now have access to service via a system established by the Board and detailed in the grant agreement.

Construction of the Network

Within twenty-four (24) months from entering into an agreement with the Board, the Applicant must perform the following:

1. Offer broadband Internet access service with speeds of at least 100/100 Mbps. The Applicant may also offer broadband service at lower tiers of service at a lower price, but consumers must be able to purchase broadband service at speeds of at least 100/100 Mbps. Speed

guarantees are to be verified through an acceptance test with the customer and are subject to verification by the Board.

2. If applicable, offer service to the identified locations at the same rates and terms and conditions or better than offered to Applicant's existing customers.
3. Offer retail broadband service to every eligible location identified in the award for a period of at least five (5) years from the date service is offered to eligible locations.
4. Once addresses begin to be connected provide quarterly updates via the online portal detailing service availability at each location in the project. Applicant must also notify those addresses that service is now available.
5. Final "as built network designs" must be provided upon the completion of construction.
6. The Board reserves the right to inspect the network before certifying project completion.

PROPOSAL REVIEW AND SELECTION

Method of Award: Awards will be made in the best interest of the State. All other considerations being equal, priority will be given first to those projects that align with the goal and priorities outlined in this Request for Proposals. Qualitative determinations will be made regarding community need and community impacts. Scoring will not be numerical.

Selection without Further Discussion: The Board reserves the right to select a proposal without further discussion. Therefore, it is important that each proposal 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 to waive informalities and minor irregularities in proposals received, and to accept any portion of a proposal if deemed in the best interest of the State and in accordance with the applicable provisions of law.

Negotiations with Applicants: Upon completion of the evaluation process, the Board may select one or more Applicants with which to simultaneously negotiate grant agreements for the provision of service in a proposed Universal Service Plan area, 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. In the event the Board is successful in negotiating with one or more Applicants, the Board will issue a notice of award. In the event 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 grant of an award to an Applicant is at the discretion of the Board based on its judgment that the proposal submitted will promote the general good of the State and is in accordance with Vermont law.

Appeal Process: If an application is rejected, the Applicant can appeal the decision. The Applicant must submit an appeal letter to the VCBB within 30 days of the rejection. The letter must explain why the Applicant disagrees with the decision and provide documentation detailing as to why the Applicant thinks it should have been approved. Grounds for appeal shall include evidence of at least one of the following:

- The proposal was reviewed on the basis of criteria other than those appearing in the RFP.

- The staff or the Board decision was influenced by members who failed to disclose conflicts of interest
- The rejection decision was made based on erroneous information or calculations.

TERMS AND CONDITIONS

Binding Offer: A proposal submitted in response to this RFP shall constitute a binding offer, until approval by the Board of a finalized agreement to be drafted in accordance with Bulletin 5. Acknowledgment of this condition shall be indicated by the signature in the Transmittal Letter of the Applicant or an officer of the Applicant legally authorized to execute contractual obligations.

Use of Funds: Funds remitted by the VCBB are for use in payment for the approved project(s) and are restricted for the purposes of the grant. Applicants shall not include payments by the VCBB in general operating revenues or for other purposes other than performance of the grant

Limited Liability: The Board assumes no liability with respect to this RFP or any matters related thereto. All prospective Applicants and their assigns and successors, by their participation in the RFP process, shall indemnify, save and hold the Board and its employees and agents free and harmless from all lawsuits, causes of action, debts, rights, judgments, claims, demands, accounts, damages, costs, losses and expenses of whatsoever kind in law or equity, known and unknown, foreseen and unforeseen, arising from or out of this RFP and/or any subsequent acts related thereto, including but not limited to the notification of a Applicant to the Board and any action brought by an unsuccessful prospective Applicant .

Agreement Cancellation: The Board reserves the right to cancel any agreements resulting from this RFP, for cause, as will be defined in the Terms and Conditions of the final agreement.

Agreement Modification: The agreement may be modified to comply with updated Treasury Guidance, administrative, judicial or legislative decisions.

Governing Law: The laws of the State of Vermont shall govern in connection with this RFP and the formation, performance, and the legal enforcement of any resulting contract or agreement.

Proposal Ownership: All deliverables submitted as a response to this RFP shall become the property of the Board and the State of Vermont. After an agreement has been executed, it is expected that all submitted responses may be reviewed by any person unless subject to confidentiality or other legal restrictions. The Board reserves the right at its sole discretion to use any or all information/material presented in reply to this RFP, including the right to destroy any information. Disqualification of an Applicant does not eliminate this right.

Warranty: As a condition of delivery of the grant funds, Applicant warrants to the Board that:

- (i) the facts and estimates provided in its response to the Broadband Infrastructure Program request for proposal are, to the best of Applicant's knowledge, correct and true;
- (ii) grant funds are economically necessary to fulfill Applicant's proposal to build, or produce the grant project, and operate the required services to the locations listed in Applicant's proposal; and

- (iii) Applicant does not already provide service of at least 100/100 Mbps to the locations listed in the Applicant's proposal.

Secondary Public Funding Resources: Applicant shall notify the Board of any support from other state or federal programs for the locations awarded to the Applicant. The Interim Treasury Rule does not restrict other funding sources being used for projects provided those funds are used for different expenses than the State Fiscal Recovery Funds.

News Releases: News releases pertaining to this RFP, grant award, or the project shall not be made without prior documented approval from the Board.

Equal Opportunity: Any Applicant submitting a proposal shall be an Equal Opportunity Employer. During the duration of the performance of the grant agreement, the selected Applicant (s) will be expected to comply with all federal, state, and local laws respecting nondiscrimination in employment.

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

Payment: Payment will be made on a performance schedule to be detailed in the grant agreement.

ADDENDUM 1: Vermont Community Broadband Board Outside Plant Design (OSP) Requirements

This document covers the Construction Grant requirements. All entities applying for grants must comply with the following:

1. Grantee must provide before construction begins a clear constructable design with standards that cover the following:
 - a. Fiber splicing and reservation recommendations to assist with outside plant equipment and fiber sizing
 - b. Loss Budgets
 - c. Account for future and/or unplanned growth including public safety and mobile wireless. Grantee must leave no less than 3 tubes of spare fibers on cables between hubs. Grantee must also spare 1 tube on cables from the OLT to the splitter when not between hubs. The smallest size number of fibers on a route will be 48. This does not apply to post splitter fiber (end runs and driveways)
 - d. Power supply and back-up requirements for active locations
2. Grantee design must include every demand point and include:

- a. Assigned specific and accounted for PON splitter and OLT port for every identified E-911 Address¹² so that provisioning and activation can be done with minimal truck rolls or future design requirements.
 - b. An estimate for drop distance and route for demand point should be known so that the impact to the material requirements and optical budget is understood.
 - c. Identification of slack budgets and loop locations.
3. Grantee's design deliverables prior to close-out must include detailed planned optical measured loss (dB) calculations. These planned losses will be compared to actual losses to ensure they fall within the Optical Extents budget. Loss testing shall be done in accordance with ANSI/TIA/EIA 526-7.
 4. Prior to close-out the grantee will provide splice diagrams in GIS format.
 5. Grantee must recommend integration locations for transit to other access points, that consider:
 - a. Geographic redundance
 - b. Connections with adjacent CUD networks
 - c. Connections with private networks, including leased fiber routes
 - d. Future redundancy opportunities
 6. Prior to close-out Grantee must provide design mapping deliverables in a single GIS (ESRI Preferred) form including:
 - a. Online and downloadable field engineering data
 - b. Online and downloadable detailed construction maps
 - c. Bills of materials linked to location
 - d. GIS network diagram that reflects what was built
 7. Equipment and materials specified must comply with the domestic preference requirements of the American Rescue Plan Act.¹³

¹² A demand point is defined as a wired structure or a structure to be wired. Structures that are off grid are not "wired". Demand points also exclude any points that are already served at 25/3 or greater

¹³ The Final Guidelines call for a domestic preference consistent with the Uniform Guidance (see below). While price differences regardless of the amount are not a reason for a waiver, the need to secure materials for the short Vermont construction season or to allow a project to proceed within the ARPA performance period would be an eligible exception and reason for a waiver if properly documented via the procurement process.

- Documentation Required: A memo outlining the following:
 - A detailed narrative explaining the procurement process for seeking the materials (RFP process)
 - Results of the procurement process that demonstrate the material to be procured is not available from a domestic provider in the timeframe necessary to allow for the completion of the project within the Vermont construction season and/or ARPA performance period.
 - Impact on the project if the materials cannot be procured within the construction timeframe. This section should include how the purchasing timeframe need aligns with securing labor, approvals, etc.

Note: Exemptions are not possible as related to the prohibition on the purchase of materials from Russia or specific Chinese companies.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

**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.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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 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 - STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Construction)
for all Contracts for Construction Connected with 2020 Pandemic

SUSPENSION AND DEBARMENT

- (1) This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State of Vermont. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the State of Vermont, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification – First Tier Participants:
- a. Prospective First Tier Contactors must sign and submit a certification as described below.
 - b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
 - c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
 - d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person,"

“principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>).

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Instructions for Certification - Lower Tier Participants (subcontractors):

(Applicable to all subcontracts, purchase orders, and other lower tier transactions)

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed

when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this

transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal; and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient who in turn will forward the certification(s) to the awarding agency

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated

Items unless the products cannot be acquired-

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's

Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or

federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a. Standard.** Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- (a) Overtime requirements.** No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) Violation; liability for unpaid wages; liquidated damages.** The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.
- (c) Withholding for unpaid wages and liquidated damages.** The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.
- (d) Payrolls and basic records.**
 - (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.
 - (2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.
- (e) Subcontracts.** The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance

by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause

DAVIS BACON ACT

All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. Part 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. Part 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

COPELAND ANTI-KICKBACK ACT

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment

CONTRACTOR BREACH, ERRORS AND OMISSIONS

- 1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must, at the State's direction, be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.
- 2. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract
- 3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract, such as termination for default. If the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

TERMINATION FOR CONVENIENCE

- 1. General
 - a. The Agency may, with thirty (30) days written notice to the Contractor, terminate the Contract or any portion thereof when such termination would be in the best interest of the Agency.

Upon notification the contractor may be directed to immediately stop all work and incur no further costs under the contract.

- b. Any such termination shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
- c. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
- d. No compensation will be allowed for items eliminated from the Contract.
- e. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed

2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall immediately proceed to:

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
- b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.
- e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
- f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.

3. Claim by Contractor

After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-

day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. Settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.

SUBCONTRACTS

Contractor shall include all above provisions of this Attachment D in all subcontracts for work performed related to this contract.

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 Department 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 subrecipients¹⁴]*** [PLACEHOLDER] has applied for FEMA-Public Assistance funding first for all FEMA-eligible expenses before applying to this grant.

¹⁴ 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.

[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 Department 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.

- 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. [PLACEHOLDER] authorizes the State of Vermont to share data relevant to this award with the U.S. Department of Treasury, including but not limited to previously submitted W-9 data that is related to this award.
- 13. All of [PLACEHOLDER]'s tax returns are completed and filed through the date of application filing.
- 14. [PLACEHOLDER] complies with local, state and federal labor laws.
- 15. [PLACEHOLDER] is in good standing with the Vermont Secretary of State.
- 16. **[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.
- 17. **[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.
- 18. 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.
- 19. [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: