

Vermont Community Broadband Board Meeting

Monday, February 14, 9:00am*

**Note change from regular time*

AGENDA

Meeting are being held virtually

Join by video <https://bit.ly/3gCXbTj>

Join by Phone; [+1 802-828-7667](tel:+18028287667), [389833626#](tel:+18028287667)

Note: There may be an Executive Sessions if necessary.

- | | |
|-------|--|
| 9:00 | 1) Meeting call to order |
| 9:05 | 2) Approval of the January 31, 2022 minutes |
| 9:15 | 4) Material Default – what constitutes a Material Default? Discussion and possible vote on resolution |
| 10:00 | 5) Lamoille FiberNet Pre-construction Grant Amendment Request |
| 10:15 | 6) Maple Broadband Pre-construction Grant Amendment Request |
| 10:30 | 7) Pre-Approval or Commitment Letters for Assumed Grantees |
| 10:50 | 8) Parking lot review |
| 11:05 | 9) Other Staff Updates. <ul style="list-style-type: none">• Construction Program Eligibility Determinations/Invitations Issued for Full Applications• Fiber Optic Engineer RFP awarded• Outside Legal RFPs posted• Broadband Project Developer Search• Legislative Updates |
| 11:20 | 10) VCUDA update |
| 11:45 | 11) Public Input |
| 12:00 | 12) Motion to adjourn |

Contact Rob Fish, Robert.fish@vermont.gov 802-522-2617

Vermont Community Broadband Board Draft Meeting Minutes
112 State Street, 3rd Floor
Giga Conference Room
Montpelier, VT
January 31, 2022

I. Call To Order – 12:03pm

II. Roll call completed by Patty Richards

Brian Otley (Remote- joined at 12:26pm)
Holly Groschner (Remote)
Dan Nelson (Remote)
Patty Richards, Chair (Remote)
Laura Sibia (Remote)
Christine Hallquist- Staff (Remote)
Stan Macel- Staff (Remote)
Kristin Brynga- PSD Staff (Remote)

III. Review of Agenda

There was no motion to make changes to the agenda and Patty proceeded with the meeting as indicated.

IV. Approval of Meeting Minutes

There were no changes to the January 18th, 2022 draft Board Meeting minutes. Holly Groschner moved to approve the minutes. Patty Richards seconded. The motion was approved.

V. State Legislative Updates and Action

Stan Macel presented an update on the proposed amendments to Act 71 by which changes to the language would be made regarding distribution of a CUD's assets in the case of dissolution. These changes affect 30 V.S.A 8086(c) and section 7. Through discussion with the CUDs, state officials and professionals in the bond market it was noted that one or both of these provisions as written may make it difficult for CUDs to access the bond market. Further, creditors want assurances that they will be able to obtain a CUD's assets through liens before entering into finance agreements. This necessitates the proposed changes which would make a CUD's assets subject to receivership by a court-appointed receiver in the event of a dissolution. Stan noted two options for changes including assets reverting to the State with language included to specify that the reversion is "subject to any outstanding bondholders' or

creditors' liens". The second option removes reversion to the State and instead subjects the reversion to a receivership by a court-appointed receiver.

Christine noted that they had reached out to several individuals for comment including Jim Anderson, Capital Advisor for ECFiber, VCUDA, Eli Emerson and Paul Giuliani, EC Fiber's bond lawyers. Through those discussions, one concern raised by VCUDA was a lack of statutory definition to define "material failure" as included in the Act 71 language. Stan believes that the board has the ability to define "material failure" and Patty indicated that the board will need to make a policy definition for this in a future meeting.

Holly questioned the authority of the court to appoint receivership for municipal entities. This has not yet been confirmed. Christine proposed making the recommended changes conditional upon confirmation of court authority.

Public comment regarding the impact of proposed changes were taken from Christa Schute, Will Anderson, Irv Thomae, Ann Manwaring and Magna Dodge.

Following public comment, Staff recommended that the board approve changes to only section 8086(c) with the receivership option and leave the Section 7 language as is. Holly made a motion to recommend the Staffs' proposed language change to section 8086(c) that allows for receivership as a result of a CUD's failure to meet its financial obligations. Patty seconded the motion. The motion was approved conditional to confirmation of judicial authority for receivership.

Action items coming out of this were:

- The board will make a policy definition for "material failure".
- Staff will further review the language in section 7 to determine if further changes are warranted.
- Based on these discussions Staff will confirm judicial authority for receivership.

Stan Macel gave an update to the Board on S.166 which proposes to require the Public Utility Commission (PUC) to revise its rules to include enhanced consumer protection provisions related to the cleanup of utility construction sites. Minor changes to the original proposed changes were indicated with the hearing postponed to next week. No action needs to be taken by the board regarding these changes.

Stan Macel gave an update to the Board on S. 222 which was approved by the Senate on January 12, 2022 and signed by the Governor allowing electronic-only meetings through January 15, 2023. The Board understands that this bill applies to the Board and all CUDs, and unanimously agreed to remain entirely remote until there is agreement that it is safe to resume in person meetings.

Stan Macel gave an update on S.167 which proposes an extension of the date to achieve statewide access to 100/100 Mbps from the end of 2024 to the end of 2029. This update is only for the Board's information currently with no Board action required.

Stan Macel noted that Christine attended the House Energy and Technology Committee hearing to discuss critical communication expansion programs and broadband investment aspects of the Governor's proposed budget. June Tierney and Clay Purvis from the PSD discussed the communication program at the same meeting, and the committee had many questions. A follow-up meeting will be scheduled in the coming weeks to continue the discussion and hear Christine's testimony regarding broadband investment.

VI. Update on Act 71 Construction Grant Program RFP

A pre-application came in from Maple Broadband. That application required some changes and the CUD is working to make those changes so there is nothing to bring to the Board currently.

VII. Review of Responses to NTIA Questions

Christine presented a draft of comments on the National Telecommunications and Information Administration's (NTIA) Request for Comment on the Infrastructure Investment and Jobs Act Implementation. These comments are intended to provide guidance to the NTIA in its efforts to "help meet the President's goal to close the digital divide". Christine presented all 36 questions and their respective responses to the Board and each was discussed with proposed revisions identified. Christine will make the necessary changes. The comments need to be officially submitted by February 4th, 2022. Christine will provide a revised draft to the Board for review prior to submission. This is a combined document for PSD and VCBB. If there are any disagreements in proposed answers for the final submission, the document can be filed separately from the PSD comments.

VIII. Overview of Regulatory Requirements for CUDS

Stan Macel gave an Overview of Regulatory Requirements for CUDs with emphasis on the complexities involved with both federal and state requirements. Compliance with these requirements is required to successfully apply for grants through a variety of programs. In addition, their activity is also regulated at the federal level by the FCC. They are subject to various quarterly and yearly filings as well as requirements to have certain policies. Additionally, the CUDS must register with the Secretary of State and are subject to State reporting requirements.

IX. Consideration of RFPs for Legal Services

The Board discussed the two RFPs for legal services for 1) Regulatory Assistance and 2)

Contract Negotiations. Holly noted that the Board also needs legal representation to facilitate discussion with the CUDs' legal counsel to ensure requirements under Act 71 are being fully met. Patty indicated that the Regulatory and Contract Attorney decisions do not need to be approved by the Board but that Staff has authorization from the Board to proceed with the process. Christine and Stan can determine what functions are best to outsource or keep in house and draft the RFPs accordingly. Patty also authorized Holly to provide assistance to the Staff with drafting these RFPs.

X. Staff Updates

Christine gave the staff updates in regard to workforce development. The Vermont Business Roundtable is applying for a Good Jobs Challenge Grant and they are including the Fiber Technicians as part of that grant. Training has been set up for fiber technicians in March, April and May. The March program is already full but there is expected still be additional need.

Christine also noted that in order to fill immediate needs they are working with the Communication Workers of America (CWA). The CWA has indicated that there are retired technicians that retired early from Fairpoint that want to go back to work. These are highly skilled and talented technicians and they may be able to fulfill some of the immediate needs for this expertise. Christine has also reached out to Canadian contractors for the summer as well. Christine has also been working with the Congressional Delegation to figure out how to make it easier to bring in these Canadian Workers this summer.

The GIS project is up and running. Alissa is running this project. They have reached out to the AOT to figure out how to roll our needs into the AOT schedules to coordinate when they are digging up the roads so that we can get conduit buried.

The Board expressed its condolences to Rob Fish and his family on the unexpected passing of his father. The Board authorized Christine to provide a memorial gift or other show of support to Rob's family on behalf of the Board.

XI. VCUDA Updates

Will Anderson provided an update for VCUDA. Will noted that a discussion had emerged as a result of the Act 71 changes discussed previously in the meeting, that centers around the ability for a CUD that is having financial trouble to merge with another CUD to avoid the dissolution process. Currently the only avenue to accomplish this merger would be for towns to leave one CUD and join another one by one. This presents a potential problem with financing with the transition of assets. Will has requested that the Board consider a policy change that would make it easier for CUDs to merge should the need arise. Laura, encouraged Will to look at this as needing a legislative change because a CUD is created based on statute. She encouraged the VCBB counsel, VCUDA counsel and Legislative Counsel to meet to discuss this further. Holly also brought up the question as to whether the governing board of the failing CUD could vote to transfer its responsibilities and assets to another CUD. That transfer of assets would have to go before the VCBB. Holly

recommends more exploration and further discussion with legal counsel on this topic.

Regarding the proposed RFPs for Regulatory Assistance and Contract Negotiation, Will questioned what the mechanism for funding would be as not all CUDs would need to leverage these resources. He questioned how these resources be distributed. Christine indicated that there is money in the VCBB budget for regulatory expertise so the VCBB is not intending to charge the CUDs for this work.

Will also has recently drafted RFPs for accounting and auditing services across the state. They are under review and Will was wondering if this falls under shared services that the VCBB should be collaborating with VCUDA on. Christine indicated that they will work with Will to determine the best answer for that situation.

Will discussed the labor strategy. He indicated that the Make Ready process could use some additional support from the VCBB. The utilities across the state have three pre-qualified contractors each who perform Make Ready work. Some of these are known to the CUDs and some utilities have not disclosed these agreements which precludes the CUDs from being able to also contract with them for Make Ready work. Will questioned whether there is any way for the VCBB to assist with this problem. The other issue he noted is that there could be a much higher rate of poles that are damaged or derelict than disclosed and that the utilities have not done much work to remedy this. Christine suggested that this be put on the next agenda for the VCUDA meeting so that Christine can learn more about this and provide further feedback and support.

XII. Public Input

The Board heard public input during the discussion of proposed changes to Act 71 as noted in that section. In addition, the following individuals had further public input during the public input section of the meeting.

Roger Nishi

- 1) Roger provided public comment on NTIA Comment #19 and #24 regarding funding community owned networks as stated. He questioned whether the VCBB can make those statements given that Act 71 includes other providers under its eligible carriers definition. Christine will make note of that and review further. Holly indicates that the solution should follow the statute where eligible providers would be required to have a community provider in tow. Patty indicated that we should retool this language in the NTIA comments.
- 2) Roger also indicated that the timeline in the application process indicates that the grant application can be submitted 10 business days before a board meeting which could create a situation that would require the applicant to submit the full application the same day the pre-application is approved to get approval by the end of the same month.

Steve Huffaker

- 1) Steve raised a question regarding the scope of the contract negotiation RFP. Maple

Broadband has an existing agreement with Waitsfield and Champlain Valley Telecom and if this agreement was considered within scope there could be consequences to opening the agreement which could also have implications for the overall Maple Broadband Build Plan. Holly indicated that the intent is to provide assistance, not to completely revise existing agreements.

- 2) Steve indicated they revised their Build Plan to account for incidental overbuild requirements in the RFP. While doing this they discovered that only about 28% of their subscribers would be qualifying. They would need about 1,000 or more subscribers to gain access to the bond market. If the only funding they receive is from VCBB grants with the noted caveat, they will not be able to access the bond market until after construction is complete. Steve wants the board to be aware of this as it may be a problem for other CUDs as well. Christine indicated that she will review further and Staff will make a recommendation to the board on this issue. Patty inquired as to whether Steve had considered joining with another CUD but he indicated that at the current time the only possibility would be with Otter Creek. Laura indicated that she would be in favor of providing additional support for those discussions.

Will Anderson

- 1) Will indicated that in regard to Steve's comments about Otter Creek, he is willing to help facilitate those discussions. Otter Creek is working on an RFP to establish a construction partner currently so now might be a good time to have those discussions. Another possible solution in regard to overbuild, is the new Treasury final rule for ARPA which has broadened the restrictions for overbuild. The new language allows the funds to be used anywhere the need for faster and more reliable internet connection can be demonstrated. This isn't part of the current RFP or Act 71 but using some of the Treasury language would allow for greater flexibility.

XIII. Executive Session

Patty Richards made a motion to go into Executive Session, to discuss confidential negotiations, where premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage (1 V.S.A. Section 313.1). Dan Nelson seconded the motion. The Board approved the motion and went into executive session.

XIV. Motion to Adjourn

Patty Richards confirmed that no action was taken in the Executive Session. Dan Nelson made a motion to adjourn. Brian Otley seconded the motion. and the meeting was adjourned at 4:04pm.

Material Default/Material Failure to Comply Discussion

VCBB Meeting

February 14, 2022

I. Act 71 calls for Board to establish standards for material failure to comply

Act 71 states:

The Board shall establish policies and standard grant terms and conditions that ...

Establish standards for recouping grant funds and transferring ownership of grant-funded network assets to the State if a grantee *materially fails to comply* with the terms and conditions of a grant. 30 V.S.A. § 8086(c)(3).

- Goal is not to reach material breach at all, and if so, to cure the breach before considering recoupment. However, this policy would be in the unlikely situation that material breach occurred and could not be cured.

II. Steps to determine material breach

Identify the steps to determine whether a material breach has occurred:

1. Identify the specific breach or behavior that constitutes a “material failure to comply” (see Part III below)
2. Seek a correction - request that grantee provide a Corrective Action Plan within a cure period (set timeframe, e.g. 30 days). This is the case for material breach in the Construction Grant RFP.
3. Request return of funds/assets - upon expiration of cure period, if the a Corrective Action Plan is not submitted and agreed to, or the grantee fails to meet the requirements of the Corrective Action Plan, request that grantee return money and/or assets within a set timeframe.
4. If grantee does not return funds/assets within the set timeframe, seek additional remedies to recoup funds/assets (e.g. legal proceedings)

III. What constitutes a material breach

A material breach is a breach of a fundamental or essential term of the grant. This could include:

- Bond covenants/financial agreements. When a CUD fails to meet bond covenants and/or agreements with financial institutions

- Construction schedule. When a CUD fails to meet its construction and connection schedule, that requires a discussion between the CUD and the VCBB. Minor schedule deviations are expected, major deviations can have serious financial implications. Business plans are based on customer revenue, which are based on connection schedules. A CUD could be in material default to the VCBB because of non-conformance to construction schedules.
- Performance measures. When a CUD fails to meet its operational performance measures over an extended period, this could result in a material default with the VCBB as it jeopardizes the long-term business performance of the CUD. Some example of operational performance measures that could result in material default include:
 - Poor connections speeds over time
 - Excessive latency over time
 - Poor customer relationships. Indicators include:
 - Wait times
 - Abandoned calls/chats
 - Email response times
 - Customer satisfaction survey results
- Workmanship. Sloppy workmanship and poor housekeeping can result in a material default with the VCBB.
- Safety practices. Poor safety practices can result in a material default with the VCBB.
- Audit findings. Material findings in an audit can result in a material default.
- Financial statement and internal controls discrepancies. Serious issues concerning internal controls or the integrity of financial statements can result in a material default.
- Debarment
- Others?

IV. A Material Breach Policy would organize existing concepts of material breach in one place and ensure they apply to all grants

The existing RFPs contain many provisions that address a party's material breach. For example, Attachment C to all State contracts (provided as an attachment to the Construction Grant RFP) contains provisions addressing reliance by the State on Parties' representations; notes Parties are subject to Vermont's False Claims Act; allows either Party to terminate the contract for a Material Breach; and requires a grantee to return property to the State upon termination. A sampling of relevant provisions follows:

- 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. (p.27 of RFP)
- Parties are subject to Vermont's False Claims Act (32 V.S.A. § 630 *et seq.*) (pp. 27-28 of RFP)
- 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 (p.30 of RFP)

- 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. (p. 30 of RFP)



State of Vermont
Vermont Community Broadband Board (VCBB)
112 State Street
Montpelier, VT 05620-2601
<https://publicservice.vermont.gov/vcbb>

Date Issued:

Applicant ID:

0

Dear Applicant,

The Vermont Community Broadband Board (VCBB) is issuing this letter on your behalf as certification that you have met all eligibility requirements for funding from the Vermont Community Broadband Board (VCBB) to provide universal service of at least 100/100 Mbps for {Insert Universal Service Area}. Upon the successful submission of an application meeting the criteria established in Act 71 and the items detailed in the attached letter of certification as judged by the Vermont Community Broadband Board, the applicant will be awarded up to \${Insert amount available as determined by formula} to complete a universal service project.

Eligibility requirements can be found at: <https://erap.vsha.org/renter-eligibility/>.

This Letter of Intent is valid for 120 days from the date of issue.

If you have any questions, please contact Christine Hallquist, Executive Director of the Vermont Community Broadband Board at _____.

Sincerely,



Applicant Certification

Applicant hereby certifies it understands that all of the following conditions will apply to any project funded by the VCCB Construction Grant Program:

1. *Each person signing 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.](#)*

Print Name of Organization and Title of Applicant

Print Name of Applicant

Date





State of Vermont
Vermont Community Broadband Board (VCBB)
112 State Street
Montpelier, VT 05620-2601
<https://publicservice.vermont.gov/vcbb>

Recommendation to the Board

Staff has reviewed the Pre-construction Grant Amendment Requests submitted by Lamoille FiberNet and Maple Broadband and recommends Board approval.

We will provide supporting information at the 2/14 Board meeting for the changes as well as answer any questions from Board Members.





February 10, 2022

Vermont Community Broadband Board
vcbb@vermont.gov

Re: Maple Broadband 02240-FY22-A71PreC-01 grant supplement request

In our haste to apply for the preconstruction and capacity building grant, we failed to consider the fact that these funds must carry us through 2023

Maple Broadband requests \$535,000 of supplementary funds in support of the following expenses that currently only carry us through only part of 2022 and none of 2023.

	Category	Accounts	Initial 2022 budget	Revised 2022 & 2023 Budget
1	Administration	Minute taking service, O360 licenses, QuickBooks subscription, VCUDA dues	\$0	\$28,000
2	Professional	Legal, auditing, bookkeeping, GIS services	\$90,000	\$85,000
3	Insurance	General liability including umbrella, public officials' liability	\$8,000	\$7,000
4	Marketing Services		\$75,000	\$315,000*
5	Contingency		\$5,000	
6	Phase 1a make-ready		\$0	\$200,000
	Total			\$635,000

* Marketing estimate is the result from the recently concluded competitive bid process

Regarding item 6 above, 1) Maple Broadband certifies that we are taking full advantage of Green Mountain Power's tariff rider providing a \$2,000 reduction to the cost of make ready work associated with unserved addresses, and 2) upon request, Maple Broadband will deliver to VCBB staff a sufficient level of design engineering that will ensure a high percentage of make-ready accuracy.

Sincerely,

Steve Huffaker
Chair - Maple Broadband

Maple Broadband Members

Addison
Ferrisburgh
Monkton
Ripton
Vergennes

Bridport
Leicester
New Haven
Salisbury
Waltham

Bristol
Lincoln
Orwell
Shoreham
Weybridge

Cornwall
Middlebury
Panton
Starksboro
Whiting



February 10th, 2022

To: Robert Fish, VT Dept. of Public Service, Robert.Fish@vermont.gov
Cc: Christine Hallquist, VT Community Broadband Board, Christine.Hallquist@vermont.gov
Cc: psd.telecom@vermont.gov

Rob and Christine,

Please accept this letter of transmittal for a request to amend our original grant proposal for Grant # 02240-FY22-Act71Prec-06

As you can see below in the Proposed Activities section, this amendment is due to two factors:

- Change in the Lamoille FiberNet staff and associated taxes and benefits.
- Change in the rent allocation.

Please let us know if you have any questions or need any further information.

Sincerely,

Val Davis, Executive Director

Request for Amendment to Grant # 02240-FY22-Act71Prec-06

Section 1: Applicant Information

Name of Communications Union District(s) or Collaborating Partner:

Lamoille FiberNet Communications Union District

If you are a collaborating partner, please include a list of your Communications Union District partners and a letter of support: _____

Address: PO Box 1637, Morrisville, VT 05661

Contact Phone: 802-696-9025

Contact Email: director@lamoillefibernet

DUNS #: 117632865

SAMS #: 8SR08

Section 2: Proposed Activities

Please detail how you as the Applicant will use these funds to accelerate plans to expand connectivity in your service area. Please detail the status and urgency of each activity (RFP, Ready to Sign a Contract, Etc.). Please also highlight any collaboration between CUDs and whether the project can proceed without these funds. *Please limit your response to no more than 2 pages.*

This amendment is primarily due to two factors:

- Change in the Lamoille FiberNet staff and associated taxes and benefits
- Change in the rent allocation.

Change in the status of the Lamoille FiberNet staff

At the urging of the VCBB we are hiring a Grants Administrator/Office Coordinator position. We are budgeting this as a 20 hour per week part time position. Our board has approved up \$45 per hour for this position, but expect to fill it for between \$30 and \$40 per hour. I am budgeting \$40,000 per year for this part time position along with associated increases in the associated costs i.e, taxes, benefits and workman's compensation.

Change in cost of rent.

Lamoille FiberNet was able to secure an office location in downtown Morrisville. This space is large enough for the CUD to conduct all business, meetings etc. at this location. The cost is \$650 per month or \$7800 per year.

Conclusion

In conclusion, we would appreciate your approval of our amended proposal and budget, and we look forward to continuing our work on bringing high-speed, symmetrical broadband to the district of Lamoille FiberNet CUD.

Section 3: Amended Budget (areas highlighted in yellow are changed):

Original Grant Budget		Amended Grant Budget	
<i>Capital</i>		<i>Capital</i>	
Pole Data Collection	\$360,000	Pole Data Collection	\$300,475
Design	\$120,000	Design	\$120,000
Make Ready	\$400,000	Make Ready	\$400,000
<i>General & Administrative</i>		<i>General & Administrative</i>	
Accounting	\$37,020	Accounting	\$37,020
Advertising & Marketing	\$10,000	Advertising & Marketing	\$10,000
Dues, Fees & Subscriptions	\$4,000	Dues, Fees & Subscriptions	\$4,000
In-Kind	\$11,140	In-Kind	\$11,140
Insurance	\$5,625	Insurance	\$5,625
Legal	\$48,000	Legal	\$48,000
Meetings/Travel	\$1,400	Meetings/Travel	\$1,400
Office Supplies	\$950	Office Supplies	\$950
Postage	\$8,550	Postage	\$8,550
Prof. Development & Training	\$1,000	Prof. Development & Training	\$1,000
Professional Services	\$21,000	Professional Services	\$21,000
Rent & Utilities	\$2,400	Rent & Utilities	\$7,800
Supplies	\$700	Supplies	\$700
Telephone	\$360	Telephone	\$360
Website & Email	\$6,000	Website & Email	\$6,000
<i>Personnel</i>		<i>Personnel</i>	
Employee Benefits (health, retire)	\$23,760	Employee Benefits (health, retire)	\$33,760
Insurance - Workers Comp	\$800	Insurance - Workers Comp	\$1,200
Payroll	\$120,000	Payroll	\$160,000
Payroll Taxes	\$11,180	Payroll Taxes	\$14,905
TOTAL	\$1,193,885	AMENDED TOTAL	\$1,193,885

Section 4: Applicant Certification

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 in any action contrary to the non-collusion requirements of this grant opportunity.

Signature of Authorizing Official: 
Name of Authorizing Official: Val Davis Title: Executive Director
Date: 11/8/2021

**ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS
AND GRANTS REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights, or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights, or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

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

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers'

compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary, to comply with Vermont law.

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability Contractual
Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers, and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers, and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior 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)