



CITY OF BURLINGTON
Office of the City Engineer
645 Pine Street
Burlington, VT 05401
(802) 865-5830

Chapin Spencer
Director of Public Works

TO: Burlington City Council

FROM: David K. Allerton, P.E., Public Works Engineer *David K Allerton*

CC: Norm Baldwin, P.E., City Engineer

Date: January 15, 2014

RE: Request Authorization to Accept Federal Highway Administration Recovery Funds to Repair the Manhattan Drive Slope Failure

I am writing to request the City Council approval for accepting Federal Highway Administration Recovery Funds for the Manhattan Drive Slope Failure. This request was reviewed and approved by the Board of Finance at their January 13, 2014 meeting.

I am attaching the following documents for your use:

1. FHWA Grant Agreement,
2. Resolution for accepting the FHWA Grant.

BACKGROUND

On May 22, 2013 the Burlington area experienced heavy rainfall which caused significant erosion of the slope along the north side of Manhattan Drive just west of the intersection with North Champlain Street. During the event, stormwater runoff was observed flowing over the crest of the slope, water was leaking from a failed 3-foot diameter stormwater pipe which traversed down the slope, and water was leaking from a sewer overflow pipe which also traversed down the slope, and was adjacent to the stormwater pipe.

Emergency work was completed in June and July of 2013 to stabilize the slope and get Manhattan Drive back into service, with the resulting loss of one westbound lane. The stormwater and sewer pipes were replaced, a sheet pile wall was installed and temporary grading was completed to stabilize the slope. The failed embankment is approximately 100 feet high. Additionally, Manhattan Drive was repaved and stormwater rechanneled to a catch basin leading to the newly installed stormwater pipe.

The Federal Highway Administration (FHWA) was contacted immediately, and FHWA arrived on site to evaluate the failure, and complete a Detailed Damage Inspection Report (DDIR). Additionally, this event was declared a Federal Disaster and thus making federal funds available to Burlington to aid in the repairs and recovery of this infrastructure.

On Thursday, January 2, 2014, DPW obtained the formal grant application from FHWA requiring authorization by the City of Burlington in order to secure the funds.

FUNDING ELIGIBILITY

The total repair cost for the project is estimated at \$591,275. The following table summarizes the breakdown of assistance provided under FHWA's Emergency Relief Program:

Item	FHWA Percent	FHWA Share	Local Match Percent	Local Share	Total Cost
Emergency Repair	100%	\$241,275	0%	\$0	\$241,275
Permanent Repair	81.08%	\$283,780	18.92%	\$66,220	\$350,000
				Total Cost Estimate	\$591,275

The local match obligation will come from the CIP Emergent Projects Line Item. The CIP has obligated \$70,000 for this project.

SUMMARY

DPW is seeking the following:

- the authorization of the Burlington City Council to accept the grant from FHWA, and to authorize the Director of Public Works, Chapin Spencer, or his designee, to execute the Cooperative Agreement with VTrans.

If there are any questions please do not hesitate to call me, I will be at the meeting to answer any additional questions.

Detailed Damage Inspection Report (Title 23, Federal-aid Highways)					Report Number D5-FAS 5024-17	
Location Damage is located in Burlington on FAS 5024 (Manhattan Dr) MM 0.07 Site #11					FHWA Disaster Number VT13-1	
					Federal-Aid Route Number FAS 5024	
Damage Description and Dimensions Slope failure					Applicant State <input checked="" type="checkbox"/> County	
					Inspection Date 7/24/13	
Scope of Work Repair slope					Sheet 1 of 1	
Cost Estimate						
Emergency Repair	Description of Work to Date (Equipment, Labor, Materials)	Unit	Unit Price	Quantity	Cost	
					Completed	Remaining
	Emergency Stabilize slope				\$241,275.00	\$0.00
Method of Work <input type="checkbox"/> Local Forces <input type="checkbox"/> State Forces <input type="checkbox"/> Contract				Subtotal		
				PE/CE		
				Emergency Repair Total	\$241,275.00	
Permanent Restoration	Repair slope					\$350,000.00
Method of Work <input type="checkbox"/> Local Forces <input type="checkbox"/> State Forces <input type="checkbox"/> Contract				Subtotal	\$350,000.00	
				PE/CE		
				ROW		
				Permanent Repair Total	\$350,000.00	
Environmental Assessment Recommendation <input type="checkbox"/> Call Excl <input type="checkbox"/> E/A/EIS <input type="checkbox"/> NR					Estimated Total \$591,275.00	
Recommendation <input type="checkbox"/> Eligible <input type="checkbox"/> Ineligible					Date	
Concurrence <input type="checkbox"/> Yes <input type="checkbox"/> No					Date	
Concurrence <input type="checkbox"/> Yes <input type="checkbox"/> No					Date	

NORMAN BAUDWIN
 CITY ENGINEER
 CITY OF BURLINGTON

STATE OF VERMONT
STANDARD GRANT AGREEMENT

Contract # _____
EA# _____

1. Parties: This is a Grant Agreement for services between the State of Vermont, Agency of Transportation (hereinafter called "State"), and the City of Burlington with principal place of business at 149 Church St., Burlington, Vermont, 05401 (hereinafter called "Subrecipient"). Subrecipient is required by law to have a Business Account Number from the Vermont Department of Taxes.
2. Subject Matter: The subject matter of this Grant is a project under the Federal Highway Emergency Relief Program authorized by 23 U.S.C. § 125 (Emergency relief). Detailed services to be provided by the Subrecipient are described in Attachment A.
3. Maximum Amount: In consideration of the services to be performed by Subrecipient, the State agrees to pay Subrecipient, in accordance with the payment provisions specified in Attachment B, a sum not to exceed the amount for which the project qualifies for participation of federal-aid funds under the 23 U.S.C. § 125 Emergency Relief Program. For any portion of the work qualifying for an 80% federal share rather than a 100% federal share, the Subrecipient will be responsible for payment of an 18.92% match.
4. Grant Term: The period of Subrecipient's performance shall begin on May 22, 2013, and end on December 31, 2016. Unless there is satisfactory justification for project delay to warrant its retention, projects for permanent repairs that have not advanced to construction obligation by September 30, 2015 cannot be authorized. Justification for such delay and request for time extension must be submitted to VTrans for approval. Time extensions are granted by the FHWA in one-year increments.
5. Source of Funds:

CFDA Title: Federal Aid Highway; CFDA Number: 20.205; Award Name FHWA ER Program Grant; Award Number: VT13-1; Award Year: FY 2014; Federal Granting Agency: Federal Highway Administration (FHWA); Research and Development Grant? Yes _____ No X.
6. Prior Approvals: If approval by the Attorney General's Office is required by the granting agency, neither this Grant nor any amendment to it is binding until it has been approved by the Attorney General's Office.
 - Approval by the Attorney General's Office /is /is not/ required.
7. Amendment: No changes, modifications, or amendments in the terms and conditions of this Grant shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Subrecipient.
8. Cancellation: This Grant may be cancelled by either party by giving written notice at least 30 days in advance.

9. Attachments: This Grant consists of 21 pages including the following attachments which are incorporated herein:

Attachment A –	Description of Project and Scope of Work to be Performed by Subrecipient
Attachment B –	Payment Provisions
Attachment C –	Standard State Provisions for Contracts and Grants (01/08/2009)
Attachment D –	Other Grant Agreement Provisions
Attachment E –	Special Conditions
Attachment F –	Applicable Standards and Design Criteria
Attachment G –	Personnel Requirements and Conditions
Attachment H –	Required Submittals, State Liaison, Waiver of Standards and Modifications of Design Steps, Plans, Documents and Estimates
Attachment I –	Insurance Certificate
Attachment J –	Federal Funding Accountability and Transparency Act (FFATA) Provisions

WE, THE UNDERSIGNED PARTIES, AGREE TO BE BOUND BY THIS GRANT AGREEMENT.

STATE OF VERMONT
AGENCY OF TRANSPORTATION

SUBRECIPIENT:
City of Burlington

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: [Deputy] Secretary of Transportation

Title: _____

Date: _____, 20__

Date: _____, 20__

APPROVED AS TO FORM:

DATE: _____

ASSISTANT ATTORNEY GENERAL

**ATTACHMENT A
DESCRIPTION OF PROJECT
AND
SCOPE OF WORK TO BE PERFORMED BY SUBRECIPIENT**

- 1. Information on Disaster.** The work described below is required because of a disaster which occurred between May 22-26, 2013 and June 25- July 11, 2013. The type of the disaster was: [X] flood [] other:_____.
- 2. Location of Work.** See "Federal Highway Administration Detailed Damage Inspection Report", which is attached hereto and made a part hereof.
- 3. Work to be done:** See "Federal Highway Administration Detailed Damage Inspection Report", which is attached hereto and made a part hereof.
- 4. Detailed cost estimate:** See "Federal Highway Administration Detailed Damage Inspection Report", which is attached hereto and made a part hereof.
- 5. Subrecipient Assumption of Full Responsibility for the Project.** The Subrecipient assumes full and complete responsibility for any and all aspects relative to the development of the Project except for those items defined in this Grant Agreement for which the State retains responsibility.
- 6. Commencement of Work.** Subrecipient shall not commence work on or incur expenses for the Project until receiving authorization to proceed from the State or upon execution of the Agreement, whichever occurs later.
- 7. Federal Environmental Documentation:** As appropriate, the Subrecipient will review the National Environmental Policy Act (NEPA) environmental document (Categorical Exclusion [CE], Environmental Assessment [EA], or Environmental Impact Statement [EIS]) prepared for/by the Subrecipient, and after ensuring that it is in order, will forward the environmental document to the State for processing through the Federal Highway Administration (FHWA).
- 8. Pre-Construction:** Prior to advertising the Project for construction, the Subrecipient will:
 - (a) Review the right-of-way issues for the Project and, after ensuring compliance with all applicable federal and state laws and regulations, will forward the right-of-way certification to the State.
 - (b) Review the utility and/or railroad issues for the Project and ensure compliance with all applicable federal and state laws and regulations.
 - (c) Review the Project for compliance with all federal, state, and local laws, ordinances, regulations, and permit requirements.
 - (d) Ensure that the design meets all applicable standards, codes, and requirements for design and public safety standards.

(e) Ensure structural capacity requirements for all structures are met and that there is adherence of all traffic control devices to the FHWA's *Manual on Uniform Traffic Control Devices* (MUTCD).

(g) Review and sign all project related invoices and ensure invoices are in the proper format before submittal to the State for approval.

(h) The Subrecipient shall notify the State in writing 30 days prior to beginning the Construction phase in order to allow for the funding to be programmed. No work shall commence unless authorized in writing.

9. Project Construction. Unless otherwise approved by the State, the Subrecipient will advertise the Project for receipt of bids in conformance with federal and state laws and regulations. The Subrecipient will award the construction contract to the lowest responsive, responsible bidder and will be fully responsible for administration of the contract through completion and acceptance of the Project.

10. Construction Engineering. Construction inspection and materials sampling/testing work for the Project shall include inspection of the construction in progress for conformance with the contract requirements.

11. Project Accounting. Subrecipient will establish and maintain a separate accounting for Project funds, payments, and receipts for the duration of this Grant Agreement.

12. Compliance with FHWA/USDOT Regulations. Subrecipient agrees that it will manage the Project to comply with all applicable provisions of Titles 23 (Highways) and 49 (Transportation) of the Code of Federal Regulations (C.F.R.).

13. Compliance with Federal, State and Local Requirements. Subrecipient will comply with the requirements of all federal, state, and local laws, ordinances and regulations applicable to the Project.

14. Compliance with Permits, Agreements and Clearances. Subrecipient will secure and honor all applicable and necessary local, state, and federal permits, agreements and clearances prior to completion of final construction plans, and will adhere to or make provision for attainment of all conditions set forth in those documents.

15. Utility and Railroad Relocation and Adjustments. Subrecipient agrees that any utility or railroad relocation costs deemed participating Project costs shall meet all applicable eligibility and financial requirements as stated in federal and state laws, regulations, and policies.

16. Acquisition of Lands or Rights for Construction. Should construction of the project require the acquisition of lands or rights outside of the existing State or municipal rights-of-way, the Subrecipient shall acquire such lands or rights either by agreement or through exercise of its eminent domain powers, when applicable, in conformance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, 42 U.S.C. § 4601 et seq. (the Uniform Act) and its implementing regulations, 49 C.F.R. Part 24.

17. Hazardous Material Contamination. Responsibility for any contaminated materials within the Project area shall remain unaffected by this Grant Agreement as they are generally non-participating. The Subrecipient shall notify the State of the presence of and design alternatives for potential contaminated and/or hazardous waste sites located during the development or construction stage. Once the Subrecipient determines that contamination exists, whether obvious or established through testing, the Subrecipient shall notify the appropriate regulatory agency.

18. Maintenance of the Completed Project. If the Project is constructed, the Subrecipient will maintain the completed Project in a manner satisfactory to the State or its authorized representative(s) at no cost to the State, and will make ample provisions each year for such maintenance.

19. Personnel Requirements. The Subrecipient will comply with the personnel requirements contained in Attachment G (Personnel Requirements and Conditions).

20. Assignment of State Representative. The State will assign a representative to act as its Project liaison with the Subrecipient.

21. Conformance with Standards. The parties agree that all work performed by the Subrecipient, or its duly authorized representative, shall conform to the applicable standards/design criteria set forth in Attachment F (Applicable Standards & Design Criteria), unless waived in whole or in part in writing by the State.

22. Reviews by the State. The parties agree that, at the discretion of the State's Program Manager, the State may inspect or review any work or aspect of the Project for any reason during the development of the Project.

ATTACHMENT B PAYMENT PROVISIONS

1. The State agrees to compensate the Subrecipient for services performed up to the maximum amount stated in Paragraph 3 of this Grant Agreement provided such services are within the scope of the Grant and are authorized as provided for under the terms and conditions of this Grant.

See the attached line item budget and budget narrative.

Title: See Application in Attachment A

Subrecipient shall keep the State informed of any delays or progress related to this project not less than monthly until after completion of the project.

Subrecipient must request payment using a written Request for Payment documenting items due and payable to the Subrecipient, accompanied by all supporting documentation.

Upon presentation of properly authorized invoices from the Subrecipient, the State shall pay to the Subrecipient payment or progress payments equal to 100% of approved invoices less the Subrecipient's share. The State's payment, utilizing federal funds, will be as follows: Emergency work performed during the first 180 days after the occurrence of the disaster, may be reimbursed at 100 percent Federal share. During this 180-day period, permanent repair work is reimbursed at normal pro rata share (81.08/18.92) unless it is performed as part of the emergency work. After the 180-day period (and any extension of that period that may be authorized by Congress) all work is at 81.08 percent Federal share and 18.92 percent local share (Subrecipient match) (including the Subrecipient's share). After federal funds have been exhausted, the Subrecipient will be responsible for 100% of remaining costs. The State may retain up to 10% of the total Grant amount prior to final payment. Final payment, including any amount retained, shall be due and payable upon the State's receipt and acceptance of the final completion and acceptance accounting, which shall be submitted to the State within 45 days of the end date of the Grant.

All completed forms should be submitted to:

Name: Alec Portalupi
Title: Technical Services Engineer
Division: Operations Division
Address: Vermont Agency of Transportation
National Life Building
One National Life Drive
Montpelier, VT 05633-5001

The State shall not be responsible for expenses incurred by the Subrecipient except as specified in this Agreement.

2. **Non-Participating Costs.** Work accomplished by the Subrecipient, and/or its consultant or

contractor, which has been designated by the State as non-participating for purpose of financial reimbursement, shall be the sole responsibility of the Subrecipient. Examples of non-participating costs include elements outside the scope of work, utility work not related to the project scope, any work outside of the Project limits and approaches and that portion of right-of-way settlements which exceed "Fair Market Value", as determined by reviewing appraiser in accordance with 49 C.F.R. § 24.104 (Review of appraisals). Due to federal regulations that require all project costs to be reported within the federal financial system, the Subrecipient shall document and supply a summary of all non-participating costs. This shall include costs incurred by the Subrecipient above the maximum limiting amount of this Agreement.

3. Compliance with Vermont Prompt Payment Act. To the extent it is applicable, Subrecipient, with respect to work performed pursuant to this Grant Agreement, agrees to comply with the provisions of the Vermont Prompt Payment Act (9 V.S.A. Chapter 102).

4. Reimbursement if Project Not Constructed due to Subrecipient. If at any time the Subrecipient no longer desires the improvements as specified for the Project, or if the Subrecipient fails to meet its obligation to construct the Project, then the Subrecipient shall promptly notify the State. As provided by 19 V.S.A. § 309c(a), the State shall consult with the Subrecipient about the Subrecipient's obligation to repay project costs. The Secretary of Transportation shall then make the final determination of the amount and schedule for the repayment that shall be made to the State by the Subrecipient, considering applicable laws and regulations. Pursuant to 19 V.S.A. §§ 5(d)(13) and 309c(b), within 15 days of the Secretary's determination, the Subrecipient may petition the Vermont Transportation Board for a hearing to determine whether the amount of the Subrecipient's repayment obligation as determined by the Secretary may be reduced.

5. Payment of Amounts Found Due by Audit. In the event an audit or inspection by a certified or registered public accountant or an authorized agent of the State reveals that monies are due and owing to the State from the Subrecipient, for whatever reasons, then the Subrecipient shall pay such sums to the State within thirty (30) days of written notification of the findings of such audit or inspection.

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

1. 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.

2. Applicable Law: This Agreement will be governed by the laws of the State of Vermont.

3. 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.

4. Appropriations: 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.

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

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. 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.

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.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. 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 the 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.

General Liability and Property Damage: With respect to all operations performed under the contract, 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 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.

9. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, 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.

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. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a single audit is required.

10. Records Available for Audit: The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter 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. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 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. Party further agrees to include this provision in all subcontracts.

12. 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.

13. 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 the 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.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the 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.

15. 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 also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing 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.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. 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>

19. Certification Regarding Use of State Funds: In the case that 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.

(End of Standard Provisions)

ATTACHMENT D
OTHER GRANT AGREEMENT PROVISIONS

1. **Cost of Materials:** Subrecipient will not buy materials and resell to the State at a profit.
2. **Availability of Federal Funds:** This contract is funded in whole or in part by federal funds. In the event the federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
3. **Identity of workers:** ~~The Subrecipient will assign the following individuals to the services to be performed under the provisions of this agreement, and these individuals shall be considered essential to performance. Should any of the individuals become unavailable during the period of performance, the State shall have the right to approve any proposed successors, or, at its option, to cancel the remainder of the agreement.~~
4. **Work Product Ownership:** ~~Upon full payment by the State, all products of the Subrecipient's work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by Subrecipient.~~
5. **Prior Approval/Review of Releases:** ~~Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by the Subrecipient under this grant agreement shall be approved/reviewed by the State prior to release.~~
6. **Ownership of Equipment:** ~~Any equipment purchased by or furnished to the Subrecipient by the State under this grant agreement is provided on a loan basis only and remains the property of the State.~~
7. **Subrecipient's Liens:** Subrecipient will discharge any and all contractors' or mechanics' liens imposed on property of the State through the actions of subcontractors.
8. **Performance Bond:** ~~The Subrecipient shall, prior to commencing work under this grant agreement, furnish to the State a payment and performance bond from a reputable insurance company licensed to do business in the State of Vermont, guaranteeing the satisfactory completion of the grant agreement by the Subrecipient and payment of all subcontractors, suppliers and employees.~~
9. **Professional Liability Insurance:** ~~Before commencing work on this grant agreement and throughout the term of this grant agreement, Subrecipient shall procure and maintain professional liability insurance for any and all services performed under this grant~~

agreement, with minimum coverage of \$100,000.00 per occurrence.

10. Federal-Aid Construction Work: The subrecipient will comply with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a 7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub agreements

11. ~~Health Insurance Privacy & Portability Act:~~ ~~The confidentiality of any health care information acquired by or provided to the independent subrecipient shall be maintained in compliance with any applicable State or federal laws or regulations.~~

12. Audit of Federal Subrecipient: Under current interpretations of federal law, the subrecipient will be subject to the federal Single Audit Act. Subrecipient will comply with audit requirements contained in Circular A-133/2 CFR Part 215 and/or other applicable circulars of the U.S. Office of Management and Budget. ~~The cost of such an audit will be borne by the Subrecipient is included in the payment provisions of this Grant.~~

13. Requirement to Have a Single Audit: If this subrecipient expends \$500,000 or more in federal assistance during its fiscal year, it is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program-specific audit.

The subrecipient may elect to have a program-specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the entity.

If the subrecipient should spend less than \$500,000 in aggregate federal funds in any single fiscal year, organization-wide financial statements and a schedule of federal financial assistance for VTrans funds only shall be submitted within nine (9) months of the end of the fiscal year. The federal financial assistance schedule will list the funds by title, Code of Federal Domestic Assistance (CFDA) number, pass-through Municipal's number, award amount, receipts, and expenditures. At the Program Manager's discretion, agreed upon procedures, related to the VTrans schedule of federal financial assistance, may be required to be performed by a certified independent audit firm.

The State reserves the right to withhold reimbursement of project costs if the subrecipient does not comply with the requirements of this section or with Attachment C section 9.

14. Equal Opportunity Plan: If they are required by the Federal Office of Civil Rights to have a plan,

the subrecipient must provide a copy of the approval of their Equal Opportunity Plan.

15. Supplanting: If required, the subrecipient will submit a Certification that funds will not be used to supplant local or other funding.

16. Grant Term: The Grant term is the period during which grant funds may be expended.

Expiration of the Grant Term does not relieve the subrecipient from the duty to fulfill long term grant requirements, some of which may extend indefinitely. Such long-term requirements may include but are not limited to, maintenance of the completed project, applicable reporting requirements, and obtaining the State's approval before selling or transferring equipment or property acquired with grant proceeds.

17. Responsibility for Project Costs determined Ineligible for Reimbursement by FHWA:

In the event that Project costs incurred are not reimbursed by the Federal Highway Administration due to the Subrecipient's failure to follow proper federal guidelines and/or the expenditures are found by the State or FHWA to be federally non-participating items, the Subrecipient shall be responsible for 100% of such Project costs.

18. Limits on Reimbursement: The State will not reimburse the Subrecipient for premium rate overtime unless the State has given its prior written approval for such overtime. The State will reimburse the Subrecipient for reasonable and necessary expenses actually incurred in the performance of this Grant subject, however, to the reimbursement limitations for state employees. The State will not reimburse the Subrecipient for meals taken during travel not requiring an overnight stay away from home.

19. Compliance with Cost Principles: Grantee shall comply with the requirements set forth in 2 CFR, Part 225 (superseding OMB Circular A-87 for State and Local Governments Including Schools), 2 CFR, Part 230 (superseding OMB Circular A-122 for Non Profit Organizations), or 2 CFR, Part 220 (formerly A-21 for Higher Education Institutions) as appropriate for the Grantee's type of organization.

20. Compliance with Administrative Regulations: Grantee shall comply with the requirements of OMB Circular A-102 (State & Local Governments and Schools) or 2 CFR Part 215 (superseding OMB Circular A-110 for Institutions of Higher Education, Hospitals, and Non Profit organizations) as appropriate for the grantee's type of organization.

21. Resolution of Grant Disputes. The parties shall attempt to resolve any disputes that may arise under this Grant by negotiation. Any dispute not resolved by negotiation shall be referred to the State's appropriate Director for determination. If the Grantee is aggrieved by the decision of the Director, the Grantee may appeal in writing to the Transportation Board, through the Director, within 30 calendar days of the Director's decision, but not thereafter. The notice of appeal shall completely outline the nature and extent of the issue(s) appealed and shall include copies of any and all supporting documentation. The decision of the Transportation Board may be appealed to Vermont Superior Court by either party as provided in 19 V.S.A. 5(d)(4).

22. Interpretation of Grant. If an ambiguity or question of intent arises with respect to any provision of this Grant, the Grant will be construed as if drafted jointly between the parties and no presumption or burden of proof will arise favoring or disfavoring either party by virtue of authorship of any of the provisions of this Grant.

ATTACHMENT E
SPECIAL CONDITIONS

(Include Special Conditions here, if none so state)

None.

ATTACHMENT F
APPLICABLE STANDARDS & DESIGN CRITERIA

- A. Vermont State Standards for Design
- B. Latest Edition of the Manual for Uniform Traffic Control Devices (MUTCD)
- C. The most recent appropriate version of the VTrans Standard Specifications for Construction, as amended with its most recent General Special Provisions and Supplemental Specifications, but only to the extent not inconsistent with this Grant Agreement.
- D. VTrans Utilities Manual
- E. Vermont Pedestrian and Bicycle Facility Planning and Design Manual
- F. American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide
- G. AASHTO Guide for Design of Pavement Structures
- H. The most recent version of the Highway Capacity Manual
- I. VTrans Hydraulics Manual
- J. The Approved Project Environmental Document
- K. VTrans Structures Manual
- L. Code of Federal Regulations (CFR), Titles 23 (Highways), 48 (Federal Acquisition Regulations System) (FARS), and 49 (Transportation)
- M. VTrans Procedures for Selecting Contractors and Specifications for Contractor Services, Including Customary State Contract Provisions, but only to the extent not inconsistent with this Grant Agreement.
- N. AASHTO Specifications for Highway Bridges
- O. VTrans Design Exception Procedure
- P. VTrans Right-of-Way Manual
- Q. VTrans Policy for CADD standards
- R. U.S. Department of Justice rules implementing the Americans with Disabilities Act (ADA), 28 CFR Part 36)

If the Grantee believes that there is a discrepancy in the information contained herein or in the above-listed requirements, the Grantee shall notify the State. The State, after consultation with the Grantee, will, in its sole discretion, determine which requirement takes precedence.

ATTACHMENT G
PERSONNEL REQUIREMENTS AND CONDITIONS

A. Standards of Conduct

1) No employee, officer or agent of the Subrecipient shall participate in the selection, award or administration of a contract support by state or federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- the employee, officer or agent, or
- any member of his or her immediate family, or
- his or her partner, or
- an organization which employs, or is about to employ, any of the above,

has a financial or other interest in the consultant or contractor selected for award. Subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or any gift of any kind or value from consultants, potential consultants, contractors, potential contractors, or parties to sub-agreements. Violation of this standard will result in penalties, sanctions, or other disciplinary actions to the extent permitted by State, Federal or local law.

2) Except where it conflicts with fairness toward competitors, Subrecipient shall avoid any appearance of a conflict of interest in the award of a contract. If there is such an appearance of a conflict of interest wherein a reasonable person might conclude that the contractor was selected for improper reasons, the Subrecipient shall disclose that fact and, regardless, should document its reasons for selection all contractors.

B. The Subrecipient shall employ only qualified personnel in responsible charge of the supervision of work.

C. Except with the approval of the State, during the life of this Agreement, the Subrecipient will not employ:

1) Personnel on the payroll of the State who are directly involved with the awarding, administration, monitoring, or performance of the contract or the Project(s) which are the subject(s) of this Grant Agreement, or

2) Any person so involved within one (1) year of termination of employment with the State.

ATTACHMENT G
PERSONNEL REQUIREMENTS AND CONDITIONS (CONTINUED)

D. The Subrecipient warrants that no company or person has been employed or retained other than a bona fide employee working solely for the Subrecipient to solicit or secure this Agreement and that no company or person has been paid or has an agreement with the Subrecipient to be paid other than a bona fide employee working solely for the Subrecipient any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of the warranty, the State shall have the right to annul this Agreement without liability to the State and to regain all costs incurred by the State in the performance of the Agreement.

E. The State reserves the right to require the removal from the Project any person employed by the Subrecipient for misconduct, incompetence or negligence, as determined by the Secretary of the Vermont Agency of Transportation, in the due and proper performance of his/her duties or who neglects or refuses to comply with the requirements of this Agreement.

ATTACHMENT H
REQUIRED SUBMITTALS, STATE LIAISON, WAIVER OF STANDARDS AND
MODIFICATIONS OF DESIGN STEPS, PLANS, DOCUMENTS AND ESTIMATES

Required Submittals: NEPA documentation, ROW Certification, Contract Plans, Specifications and Estimates

Waivers of Standards: None.

ATTACHMENT I
INSURANCE CERTIFICATE

(Insert Subrecipient's Insurance Certificate Here)

**ATTACHMENT J
FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT
(FFATA)
PROVISIONS**

This grant is funded in whole or in part with Federal funds. Under the provisions of the Federal Funding Accountability and Transparency Act ("Transparency Act" or "FFATA") of 2006 and subsequent 2008 amendments, in those cases where the federal portion of the grant is greater than \$25,000, the grantee shall provide:

- A) The Total Compensation and Names of the top five executives if:
- More than 80% of annual gross revenues are from the Federal government and
 - Those revenues are greater than \$25 million annually and
 - Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).
- B) The Legal Name and D-U-N-S[®] Number on File with the federal Central Contractor Registration ⁽¹⁾:

Print Legal CCR Name	D-U-N-S [®] Number ⁽²⁾
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(1) The Central Contractor Registration (CCR) is the primary registrant database for the U.S. Federal Government. CCR collects, validates, stores and disseminates data in support of agency acquisition missions. FREE registration is available at:
<http://www.ccr.gov/Default.aspx>.

(2) The D-U-N-S Number is a unique nine-digit identification number assigned and maintained solely by Dun & Bradstreet (D&B). D-U-N-S Number assignment is FREE for all businesses required to register with the US Federal government (see # 1 above) for contracts or grants. Created in 1962, the Data Universal Numbering System or D-U-N-S[®] Number is D&B's copyrighted, proprietary means of identifying business entities. Register at:
https://eupdate.dnb.com/requestoptions.asp?cm_re=HomepageB*TopNav*DUNSNumberTab



State of Vermont
Operations Division
One National Life Drive
Montpelier, VT 05633-5001
alec.porta@state.vt.us

Agency of Transportation
Technical Services Section
[phone] 802-279-3447
[fax] 802-828-2848
[ttd] 800-253-0191

November 5, 2013

City Clerk
City of Burlington
149 Church St
Burlington, Vermont 05401

RE: FHWA ER VT13-1, Flooding Event May 22-26, 2013 and June 25-July 11, 2013

Dear Town Clerk:

There are two sources of federal emergency relief funding for repairs to municipally owned roads and bridges. Relief funding for repairs to highways that are functionally classified as "major collectors" or above (including bridges on these highways) can only come from the Federal Highway Administration (FHWA) Emergency Relief Program (ER Program). Funding for repairs to all other town-owned highways would come from FEMA's Public Assistance Program (PA Program). These two federal disaster-relief programs have some similarities, but they also have some differences in rules and regulations. Attached to this letter is more information related to FHWA's ER Program to assist your community with complying with program requirements so that your community will remain eligible for reimbursement from the FHWA ER Program. We strongly encourage your community to become familiar with the FHWA ER Manual, which is included

The FHWA ER Program provides for repair and restoration of highway facilities to pre-disaster conditions. Normally, eligible work must be within the right-of-way of the damaged Federal-aid highway. Restoration in kind is the predominate type of repair; adding protective features such as rebuilding roadways at higher elevations or lengthening or raising bridges and adding facilities such as additional lanes or upgrading structures are referred to as betterments and are not generally eligible for ER funding unless individually justified. All repair work is classified as either an emergency repair or a permanent repair. Emergency repairs during and immediately following a disaster to restore essential traffic, to minimize the extent of damage or to protect the remaining facilities can begin immediately following a disaster. These can generally be eligible for 100% federal funding, once available, if done within 180 days of the beginning date of the disaster. Permanent repairs are undertaken to restore the highway to its pre-disaster condition. Permanent repairs and emergency repairs completed after 180 days of the disaster would be eligible for 81.08% federal funding with an 18.92% local share of the eligible costs. There may be an extension of the 180-day limit for emergency work under authorization from Congress.

At this point, a Detailed Damage Inspection Report (DDIR) should have been completed by VTrans and you should have been provided a copy. Each DDIR represents a "project" eligible for federal funding. The DDIR clearly delineates if the work is considered to be emergency or permanent; the affected area could actually include both. It is important to understand how your repairs are classified (temporary or permanent) to understand how to proceed.

Attached you will find information related to federal requirements to assist your community with moving forward and ensuring that your emergency project remains eligible for federal aid. It will be imperative that you share this information with any professional consultants you may procure to assist you. You will need to

enter into a grant agreement with the Agency to start this process. I have enclosed the State of Vermont Standard Grant Agreement for the above-referenced federally declared disaster. Please have a town official fill out and sign page 2 of that document and either return it to your VTrans District representative or mail it back to me at the address shown in the letterhead above.

If you have any questions regarding this agreement or anything else related to this grant, please contact me at 802-279-3447 or you can contact your respective VTrans District representative. Thank you.

Sincerely,

Alec Portalupi
Technical Services Engineer

Enclosure
Standard Grant Agreement
FHWA ER Program Information