

STATE OF VERMONT  
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Department of Buildings and General Services, Office of Purchasing & Contracting (the "State") and Cargill, Inc., with a principal place of business in N. Olmstead, OH (the "Contractor") that the contract between them originally dated as of October 11, 2021, Contract # 42834, as amended to date, (the "Contract") is hereby amended as follows::

- I. **Maximum Amount.** The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$4,000,000.00 to \$8,000,000.00, representing an increase of \$4,000,000.
- II. **Contract Term.** The Contract end date, wherever such reference appears in the Contract, shall be changed from October 10, 2022 to October 10, 2023. The Contract Term may be renewed for one additional one-year period at the discretion of the State.
- III. **Attachment A, Scope of Services.** The scope of services is amended as follows:

Section 2 of Attachment A is stricken in its entirety and replaced in full as follows:

**2. PRODUCT PRICING (Districts, and towns within each district, are defined by Attachment D):**

Vermont AOT Districts ( <https://vtrans.vermont.gov/operations/districts> ):

Price Per Ton, Delivered:

District 3	<b>\$ 83.50</b>
District 4 Also including, by agreement of the parties, VTrans Salt Sheds in Orange and Williamstown, that became part of District 6 that became part of District 6 when District 6 was re-created in April 2021 (District 6 had not existed for a span of years).	<b>\$ 84.00</b>

**Taxes Due to the State.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor 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.

**Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs).** Contractor is under no obligation to pay child support or is in good standing with respect

to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor’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.

Contractor further certifies under pains and penalties of perjury that, as of the date this contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State’s debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

This document consists of 2 pages. Except as modified by this Amendment No. 1, all provisions of the Contract remain in full force and effect.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

**STATE OF VERMONT**

**CARGILL, INC.**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** Jennifer M.V. Fitch

**Name:** \_\_\_\_\_

**Title:** BGS Commissioner

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## STANDARD CONTACT

1. **Parties.** This is a contract between the State of Vermont, Department of Buildings & General Services (hereinafter called “State”), and Cargill, Inc., with a principal place of business in N. Olmstead, OH, (hereinafter called “Contractor”). Contractor’s form of business organization is corporation. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is commodities generally on the subject of rock salt for winter highways. Detailed requirements to be provided by Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the commodities to be provided by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$4,000,000.00.
4. **Contract Term.** The period of contractor’s performance shall begin on October 11, 2021 and end on October 10, 2022, with the State having three options to extend, of one year each.
5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Termination for Convenience.** The State specifically reserves the right upon written notice to immediately terminate the contract or any portion thereof at no additional cost to the State, providing, in the opinion of its Commissioner of Buildings and General Services, the products supplied by Contractor are not satisfactory or are not consistent with the terms of this Contract. The State also specifically reserves the right upon written notice, and at no additional cost to the State, to immediately terminate the contract for convenience and/or to immediately reject or cancel any order for convenience at any time prior to shipping notification.
8. **Attachments.** This contract consists of 16 pages including the following attachments which are incorporated herein:
  - Attachment A - Statement of Work
  - Attachment B - Payment Provisions
  - Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/15/2017)
  - Attachment D – Sites and Addresses of VTrans Maintenance Districts Covered by This Contract
9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:
  - (1) Standard Contract
  - (2) Attachment C (Standard Contract Provisions for Contracts and Grants)
  - (3) Attachment A
  - (4) Attachment B

(5) Attachment D

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

By the State of Vermont:

By the Contractor: CARGILL, INC.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Jennifer Fitch - Commissioner

Name: \_\_\_\_\_

Title: Buildings & General Services

Title: \_\_\_\_\_

**ATTACHMENT A – STATEMENT OF WORK**

The Contractor shall provide:

1. **PRODUCT: Mined Rock Salt, meeting the following qualitative and quantitative criteria, as follows:**
2. **PRODUCT PRICING (Districts, and towns within each district, are defined by Attachment D):**

Vermont AOT Districts:

District 3	<b>\$ 72.31</b>
District 4	<b>\$ 73.94</b>

3. **LIQUIDATED DAMAGES &/OR PRODUCT REJECTION, GENERALLY:** Delivered salt that does not meet the required specifications, shall be subject to Liquidated Damage and or price adjustment. Penalties, if any, for a multi-truckload delivery will be based on the single most unfavorable sample taken during that particular overall delivery. The state reserves the right to accept or reject any salt or deliveries which do not conform to the specifications for screen size, chemical quality or moisture content, or which are not delivered in good condition. Shipments that are rejected will be returned to the Contractor at no cost to the state. Contractor agrees to promptly replace all rejected deliveries of salt.

VTrans shall submit an invoice or statement to the Contractor to recover all liquidated damages. A summary of VTrans laboratory test results will accompany the statement. Contractor shall make settlement for each liquidated damage claim within fifteen (15) days of receipt of each claim. Contractor will be disqualified to bid on other state procurements if there remains an outstanding liquidated damage balance that is owed to VTrans, as applicable, unless waived by the State.

DELIVERIES WHICH DO NOT CONFORM TO THE SPECIFICATIONS OR ARE NOT IN GOOD CONDITION UPON RECEIPT SHALL BE REPLACED PROMPTLY BY THE CONTRACTOR, AND AT THE EXPENSE OF THE CONTRACTOR.

4. **CHEMICAL COMPOSITION:** Total chlorides expressed as NaCl shall be a minimum of 95%
5. **LIQUIDATED DAMAGES AS TO CHEMICAL COMPOSITION:** Liquidated Damages will be assessed against the accumulated and mixed samples of each day's deliveries to each location for salt that does not meet the chemical composition of total chlorides as follows:

Percent (%) of Sodium Chloride	Percent (%) of Payment of Unit Bid Price
95% - 100%	100%
94% - 95%	96%
93% - 94%	92%
Below 93%	Rejected

6. **GRADING:** The sodium chloride shall conform to the following particle size distribution specifications as determined by laboratory sieves per ASTM D632 (testing method is AASHTO T27 for gradation):

Passing a ½" sieve	100%
Passing a 3/8" sieve	95% - 100%
Passing a No.4 sieve	20% - 90%

Passing a No. 8 sieve                      10% - 60%

Passing a No. 30 sieve                      0% - 15%

7. **LIQUIDATED DAMAGES AS TO GRADING:** A penalty will be assessed for gradations that exceed the maximums specified in the Detailed Specifications for Mined Rock Salt. The bid price of the salt will be reduced by one (1) percent for each percent by which gradation exceeds the maximum allowed for the #30 sieve. Salt that does not meet the gradation specified for any of the sieve sizes may be cause for rejection at the discretion of the State.
8. **MOISTURE CONTENT:** Salt shall be in a free-flowing condition when received at the delivery location with a moisture content not to exceed one (1) percent. Samples will be sent to the VTrans laboratory to perform moisture content, gradation, and purity tests. Laboratory test results reports will be used to assess Liquidated Damages and the truck moistures will only be for the immediate acceptance or rejection of the product.
9. **REJECTION FOR EXCESS MOISTURE:** Rock salt that exceeds two and a half (2.5) percent moisture content will be subject to rejection at the delivery point unless the state elects to accept the salt due to supply emergencies or other extenuating circumstances.

**Visible moisture leakage from the delivery vehicle will be cause for immediate rejection of the load.**

10. **LIQUIDATED DAMAGES AS TO MOISTURE CONTENT:** Salt which exceeds the moisture content as specified will be subject to Liquidated Damages according to the following formula:

MOISTURE CONTENT	PERCENT (%) OF PAYMENT OF PRICE*
0 – 1%	100%
1.01 – 1.50%	98%
1.51 – 2.00%	94%
2.01 – 2.50%	90%
Above 2.5%	** See below

\*\*If the State of VT elects to accept salt exceeding 2.5% moisture content, the penalty/price reduction shall be as follows:

Percentage (%) of payment of unit bid price =  $100 - 10 (\text{moisture content in } \% - 1) = X\%$

Example: Moisture content of 2.5%

Percentage (%) of payment of unit bid price =  $100 - 10 (2.5 - 1)$

Percentage (%) of payment of unit bid price = 85%

11. **ANTI-CAKING ADDITIVE:** Salt shall be loose and free of lumps and shall contain not less than 20 ppm of pure anti-caking agent. Contractor must provide the appropriate Safety Data Sheet(s) (SDS) to VTrans prior to commencing deliveries, and before any proposed change in type or amount of anti-caking additive; Contractor shall not switch type or amount of anti-caking additive without advance written permission from VTrans.
12. **TESTING BY STATE:** VTrans laboratory shall test all submitted samples within fifteen (15) calendar days of product delivery.

13. **INSPECTIONS:** VTrans will collect a test sample at least once during the day during the course of a particular delivery, and shall have the option, in its sole discretion to test more than one individual delivered load during a multi-truckload delivery. Any Vermont political subdivision making use of a contract will be solely responsible for establishing and conducting their own testing processes, if any.
14. **PRODUCT SAMPLES:** VTrans reserves the right to visit and take samples from stockpile(s), transfer points or from shipments for gradation and moisture, storage conditions, etc. prior to award of Contract and at any time during the term of the contract. If the stockpile or stockpile site does not meet the specifications set forth in this document, VTrans reserves the right to reject the award of the contract.
15. **TEST RESULTS AND NOTIFICATION:** Once the test results are available, a copy of said test results will be emailed to the stated contact of the Contractor. The Contractor shall review the results and keep the results for their records. If Contractor wishes to dispute the supplied results, they will notify the State immediately in writing as to their reason for dispute. If during the contract period there are changes in Contractor contacts who receive test results, it shall be the contract Contractor's responsibility to communicate those changes to the State.
16. **ACCESS TO TEST SAMPLES:** Vermont Agency of Transportation does not retain samples.
17. **PRODUCT TESTING – ADDITIONAL PURCHASERS:** Additional purchasers who desire to test are responsible for establishing their own testing procedures. The process and any incurred cost associated with the process are the responsibility of the Additional Purchaser.
18. **SPECIFIED SOURCE:** Contractor must inform the State of the source of where the salt is being produced. If the source of the salt changes the Contractor is required to contact the purchasing agent prior to salt being delivered. The State has the right to reject any salt that comes from a different source without prior approval.
19. **STORAGE SPECIFICATIONS:** Contractor must inform the State of the location of where the salt is to be stored at prior to being delivered. If the location of the salt storage changes at any time throughout the contract, or if deliveries come from a different location, the Contractor is required to contact the VTrans Maintenance Director. The State has the right to reject any salt that comes from a different storage area without prior approval.
20. **COVERED STORAGE:** Salt piles are required to be covered at all times while at the Contractor's storage areas, except during active loading of delivery vehicles. Salt that is not covered is grounds for the State to reject any salt being delivered from uncovered storage locations.
21. **SALT PROTECTION DURING TRANSPORT:** Deliveries of salt shall be protected in transit by tight, waterproof coverings to avoid spillage. Said covering to be placed on load to prevent additional accumulation of moisture during transit and to insure the least possible moisture content upon delivery. Torn, ripped or permeable load covers are unacceptable and may be considered cause for rejection of load. Salt that has been contaminated with foreign matter will also be considered cause for rejection of load. Salt that is delivered without a VTrans employee inspecting the delivery may be considered cause for rejection of load.
22. **CONTRACTOR OBLIGATIONS AS TO FILL AT BEGINNING AND END OF SEASON:**
  - INITIAL FILL: FALL FILL OPTION:** Vermont shall notify Contractor by October 15, 2020 if Initial Fall Fill is required. If Fall Fill Option is required, Contractor shall complete the initial fill-up for Vermont AOT sheds in Districts 2, 3, 7, 8, and 9 by November 9, 2020.
  - SPRING FILL-UP/DEFERRED PAYMENT:** It is anticipated that a large portion of this contract will be used to fill storage sheds in the spring months. Vermont AOT provides district information for both the estimated usage as well as the capacities of the respective Sheds themselves. While usage figures across the State are estimates, requirements for Spring Fill-up (shed capacities) are known, and therefore can be reasonably gauged as

seasonal activity concludes. The State of Vermont reserves the right to make payment for such spring fill-up deliveries after July 1 of the contract year.

The obligation to fill the sheds at the end of the season is a separate and distinct contract requirement that is absolute, no matter how much salt the state uses in a given year.

23. **TRANSPORTATION COMPLIANCE:** The State of Vermont expects all deliveries of salt to be made in full conformance with existing State, National, or Provincial laws or regulations, in addition to the conditions and specifications set forth in this document and in any contracts resulting from this document. DELIVERIES WHICH DO NOT CONFORM TO THE SPECIFICATIONS OR ARE NOT IN GOOD CONDITION UPON RECEIPT SHALL BE REPLACED PROMPTLY BY THE CONTRACTOR, AND AT THE EXPENSE OF THE CONTRACTOR.

#### VEHICLE REGISTRATION AND DRIVER LICENSES

Vehicles must have a current commercial vehicle registration and inspection as applicable under state law. All drivers must meet all licensing requirements of the State of New Hampshire, or applicable governmental jurisdiction.

VERMONT REGISTRATIONS/PERMITS: The Trucker shall provide copies of any state vehicle registration and/or permits, including IFTA (International Fuel Tax Agreement) and Overweight Permits if applicable, with maximum registered gross weight indicated, to the District's DTA or designee before acceptance of the material. Copies of permits provided after hauling has begun shall not be considered to be in effect for this contract prior to the date that the District's DTA or designee receives the required copy

WEIGH SLIPS: All loads shall be weighed in accordance with 9 VSA (Vermont Statutes Annotated) Chapter 73 and Section 2744. NO split weighing shall be allowed. Contractor must provide a truck weight slip for each truckload of salt delivered and the slip numbers must appear on the invoice, delivered in-hand to an AOT employee with responsibility in connection with acceptance of deliveries, at place and time of delivery. All weight tickets shall be mechanically or electronically printed. Handwritten weight tickets will not be accepted and loads with hand-written tickets shall be rejected. PAYMENT SHALL NOT BE MADE FOR THAT PORTION OF ANY LOAD EXCEEDING THE LEGAL MAXIMUM REGISTERED GROSS WEIGHT OF THE DELIVERING VEHICLE. All such material shall be deposited along with the balance of the load at an appropriate VTrans facility under the terms of these specifications. Repeated violations can be the subject for disqualification of the Contractor, hauler, or both. All delivery vehicles will be required to obtain a tare weight daily prior to delivering any materials to VTrans. Vehicle manufacturers "Curb Weight" shall not be permissible for tare weights.

24. **REPORTING REQUIREMENTS:** Contractor will be required to submit quarterly product sales report to the Purchasing Agent pursuant to the schedule below detailing the purchasing of all items under this Contractor. Contractor's reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.

- a. The reports shall be an excel spreadsheet transmitted electronically to the Purchasing Agent.
- b. Reports are due for each quarter as follows:

Reporting Period	Report Due
January 1 to March 31	April 30
April 1 to June 30	July 31



July 1 to September 30	October 31
October 1 to December 31	January 31

- c. Failure to meet these reporting requirements may result in suspension or termination of this Contract.
- d. Notwithstanding the fact that any payment obligation for sales by contractor to any political subdivision or college, pursuant to "Purchasing Entities," below, shall be solely between the political subdivision or college and the contractor, the contractor must include, in reporting to State, the figures on quantities sold by contractor to, and amounts paid to contractor by, any such political subdivisions or independent colleges.

25. **DELIVERY:** Responsibility for product delivery remains with Contractor until the product is properly delivered and signed for.

26. **STATE HOLIDAYS:** Unless otherwise arranged with the DTA or location contact in advance, deliveries will not be arranged or accepted on any official State of Vermont holiday. A list of state holidays is available at <https://humanresources.vermont.gov/benefits-wellness/holiday-schedule>

27. **DELIVERY TIME OBLIGATIONS:** Contractor must accomplish delivery of any item ordered under the contract within five (5) business days from request, when the State or Additional Purchaser indicates that time is of the essence, then Contractor will make all practicable efforts to deliver at Contractor's earliest achievable opportunity.

Truck deliveries for Vermont AOT Districts will be accepted only during the hours of 7:00 am to 3:30 pm Monday through Friday (except Vermont State holidays), unless otherwise arranged with the District Transportation Administrator (DTA) or location contact (General Manager) prior to each delivery.

Delivery times for other State agencies and any other Additional Purchaser will be determined between each such purchaser and Contractor.

The use of a private carrier to make delivery does not relieve the Contractor from the responsibility of meeting the delivery requirement.

28. **DELIVERY LOGISTICS:** All truck deliveries are to be made to the doorways of the salt shed. State Personnel will push salt into the shed. Contractor must coordinate deliveries with Districts to ensure that appropriate resources are available to inspect and receive salt deliveries. Contractor shall make every effort to have deliveries be continuous until quantity ordered has been delivered to accommodate scheduling of personnel and equipment within the District. Contractor will make every effort to have delivery vehicles arrival times spread out so as not to exceed the capacity of the equipment used to pile the salt. Contractor should note that the configuration of some areas might make the use of tractor-trailer delivery unacceptable, specially, Jamaica under District 2 tractor-trailers cannot be used, and North Hero and Georgia sites under District 8 prefer dump trucks. District's DTA or designees are to cooperate with the contractor in making adequate arrangements at salt shed locations so that the contractor can unload 20-ton loads speedily at the locations.

29. **DEFAULT:** In case of default of the Contractor, the State may procure the materials or supplies from other sources and hold the Contractor responsible for any excess cost occasioned thereby, provided, that if public

necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefore shall be made at a proper reduction in price.

Without limiting the foregoing: The State reserves the right to order salt from another Contractor when the Contractor is unable to complete an order per these specifications and the area receiving the shipment has a salt supply on hand less than the requirement for 48 hours of storm coverage, as determined by the District's DTA or designee. Difference in cost between contracted amount and that which is paid by the State will be charged to the account of the original contractor.

30. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this contract. The primary contacts for this this Contract are as follows:

e. ***For the Contractor:***

Name: Amanda Knauss  
Phone: direct: 440-716-4774 mobile: 440-590-6518  
Email: [Amanda\\_Knaus@Cargill.com](mailto:Amanda_Knaus@Cargill.com)

f. ***For the State:***

Name: Trevor R. Lewis, State Commodity Procurement Administrator  
Address: 109 State Street, Montpelier, VT 05633-3001  
Phone: 802/828-2217  
Fax: 802/828-2222  
Email: [Trevor.R.Lewis@vermont.gov](mailto:Trevor.R.Lewis@vermont.gov)

**ATTACHMENT B – PAYMENT PROVISIONS**

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
  - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. All invoices are to be rendered by the Contractor on standard billhead and forwarded directly to the institution or agency ordering materials and shall specify the address to which payments will be sent. Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

Invoice timing, content and detail: each invoice must contain:

**Contractor shall submit a maximum of one invoice monthly on the last day of the month.**

Each invoice must be specific to, and only to, the applicable VTrans District, or other State agency, or other Additional Purchaser.

Each such invoice must contain, in precise and complete detail:

Identification of the applicable VTrans District, other State agency, or other Additional Purchaser.  
ALL deliveries, detailed separately by each delivery, by delivery location  
Delivery date  
Product  
Quantity  
Contract price  
Extended price

The following backup information must also accompany each invoice:

Weight slip for each delivery  
Proof of delivery slip for each delivery.

4. **PRICING:** Contractor shall provide all products F.O.B. delivery to the ordering facility at no additional cost to the State. No request for extra delivery cost will be honored. All equipment shall be delivered assembled, serviced, and ready for immediate use, unless otherwise requested by the State. No charge for packing, shipping, or for any other purpose will be allowed over and above the price quoted.

5. Contractor shall submit invoices to the AOT contact specified for each District within Attachment E, or in the case of the State Military Department, to the address identified for the Military Department within Attachment E. Contractor shall invoice Additional Purchasers at the specific contact identified by each Additional Purchaser.
6. Unless otherwise indicated in a manufacturer's return policy, unopened Products can be returned with no restocking fee up to 30 days from the date of receipt.
7. Payment method (P-Card or ACH). The State of Vermont shall have the option, in its sole discretion, to opt that some or all payments shall be made via ACH or Procurement Card (P-card = Credit Card); if the State so opts, Contractor shall be obligated to receive and accept payments via either or both such methods. Use the following link to enroll with the State Department of Finance & Management, within the Agency of Administration, for ACH payments:

[https://finance.vermont.gov/sites/finance/files/documents/Forms/VISION/FIN-VISION\\_Supplier\\_ACH\\_Authorization\\_Form.pdf](https://finance.vermont.gov/sites/finance/files/documents/Forms/VISION/FIN-VISION_Supplier_ACH_Authorization_Form.pdf)

Additional Purchasers shall negotiate their own payment methods with the Contractor.

8. The State Purchasing Card may be used by State Purchasers for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve State Purchasers from adhering to all procurement laws, regulations, policies, procedures, and best practices.

**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)

**ATTACHMENT D**  
**Sites and Addresses of VTrans Maintenance Districts**  
**Covered by This Contract**

3	Tracy Pak	Brandon Garage	4A	47 Robert Wood Dr., Brandon VT 05745
3	o) 802-786-0028 c) 802-371-8587	Castleton Garage	2A	143 Route 30 South Castleton VT 05735
3	61 Valley View, Suite 2 Mendon, VT 05701	Clarendon Garage	3A	1628 Route 7B Central Clarendon VT 05759
3		Ludlow Garage	5	91 Route 100 North Ludlow VT 05149
3		Ludlow Garage	5A	91 Route 100 North Ludlow VT 05149
3		Mendon Garage	6A	74 US Route 4 Mendon, VT 05701
3		Mendon Garage	6B	74 US Route 4 Mendon, VT 05701
3		Rutland Garage	1A	125 State Place, Rutland, VT 05701
3		Sudbury Garage	8A	3290 Route 30, Sudbury VT 05733
4	George R McCool	Randolph	1	100 BETTIS ROAD RANDOLPH, VT 05060
4	802-461-7841	Rochester	5	135 STATE GARAGE ROAD ROCHESTER, VT
4	221 Beswick Drive White River Jct., VT 05001	Royalton	6	1953 VT RT 107 ROYALTON, VT 05068
4		Royalton	7	1953 VT RT 107 ROYALTON, VT 05068
4		Sharon	9A	I-89 SB (Old Rest Area)
4		Tunbridge	12	754 VT RT 110 TUNBRIDGE, VT 05077
4		Tunbridge	12B	754 VT RT 110 TUNBRIDGE, VT 05077
4		Thetford	11	1333 VT RT 113 THETFORD, VT 05075
4		White River Jct	13	226 BESWICK DRIVE WHITE RIVER JCT, VT 05001
4		White River Jct	14	226 BESWICK DRIVE WHITE RIVER JCT, VT 05001
4		Woodstock	17	3396 WEST WOODSTOCK ROAD (US4) W. WOODSTOCK, VT 05091
4		Windsor	18	1640 US RT 5 WINDSOR, VT 05089
4		Windsor	18A	1640 US RT 5 WINDSOR, VT 05089