

VERMONT

State of Vermont
Finance & Administration
Contract Administration
One National Life Drive
Montpelier, VT 05633-5001

[phone] 802-828-2643
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Agency of Transportation

www.aot.state.vt.us

January 27, 2015

Mary A. Mead, Clerk
Town of Charlotte
159 Ferry Road
P. O. Box 119
Charlotte, Vermont 05445

RE: CHARLOTTE BO 1445(36) - Contract No. FM0145

Dear Ms. Mead:

Enclosed, please find the Finance and Maintenance Agreement for the above referenced project.

We respectfully request that you have the Agreement signed by the proper authorities and witnessed where required.

Please do not date page one of the Agreement. This will be accomplished by our office after the Agreement has been signed by the Secretary of Transportation.

Your cooperation in expediting the signing and return of the original will be greatly appreciated. We appreciate very much your cooperation in this matter.

Once the Agreement is fully executed a copy shall be returned to you for your records.

Should you have any questions or concerns, please contact me at 802-828-2643.

Sincerely,



Jon Winter
Special Agreements Administrator
Enclosure



**FINANCE AND MAINTENANCE AGREEMENT
BETWEEN
STATE OF VERMONT
AGENCY OF TRANSPORTATION
AND
TOWN OF CHARLOTTE
FOR
CHARLOTTE BO 1445(36)
EA 1445036 CONTRACT No. FM0145**

THIS AGREEMENT, made this ____ day of _____, 20____, between the State of Vermont, acting through its Agency of Transportation, with its principal office at 1 National Life Drive, Montpelier, Vermont 05633-5001 (the "STATE") and the Town of Charlotte, with its principal office at 159 Ferry Road, P.O. Box 119, Charlotte, Vermont (the "MUNICIPALITY").

WITNESSETH:

WHEREAS, the STATE proposes to submit to the Federal Highway Administration, United States Department of Transportation, a federal-aid project known as **CHARLOTTE BO 1445(36)**; and,

WHEREAS, the MUNICIPALITY, under the provisions of 19 V.S.A. Section 306 (State aid for town highways and bridges), has requested funds for this project which will provide certain improvements to a bridge of the MUNICIPALITY ("the Project"), described as follows:

Project Location: on Town Highway 39, Bridge No. 28, beginning approximately 0.2 mile south from its intersection with Town Highway 24 and extending southerly approximately 0.01 mile;

Project Description: rehabilitation of the Seguin Covered Bridge (Bridge No. 28) over Lewis Creek, including timber superstructure, bridge seats, minor approach work, and incidental items;

and,

WHEREAS, the MUNICIPALITY desires the improvement of this bridge as described above; and

WHEREAS, pursuant to 19 V.S.A. § 309a, as amended by Sec 26 of Act No. 153 of 2012, the MUNICIPALITY wishes to decrease its participating share by agreeing to close the bridge and forego a temporary structure for the duration of the project; and

WHEREAS, the MUNICIPALITY further desires that the STATE act, insofar as necessary, for the MUNICIPALITY with technical assistance and/or preparation of plans for the construction of the Project;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. Allocation of Federal/State Funds to Project. On the basis of the MUNICIPALITY's request for assistance for this Project, and subject to the availability of STATE and/or federal funds and the provisions of 19 V.S.A. Section 309a (Local highway work; uniform local share; exceptions), the STATE will allocate to the Project a sum of STATE and/or federal funds not to exceed **ninety-seven and one half percent (97.5%)** of the preliminary engineering, right-of-way, utility costs where applicable, and final construction costs.

2. Technical and Other Assistance from State. The STATE will provide MUNICIPALITY with the necessary engineering assistance to design and construct the Project, keep all accounting records, and make all payments to contractors hired by the STATE for the Project.

3. State/Municipal Cooperation. The Project will be constructed by contract under the supervision of the STATE or its duly authorized representative. The STATE and MUNICIPALITY will cooperate to advance the Project. The STATE will submit design plans and cost estimates to the MUNICIPALITY as the Project reaches the stages of Conceptual Plans, Preliminary Plans, and Final Plans. The Project will not advance to the next step until the MUNICIPALITY has given its written approval to the current step plans.

4. Use of Municipal Facilities. During the period of construction of the Project, the MUNICIPALITY will grant the STATE and/or the STATE's authorized representative the following:

- a. Temporary entry onto the right-of-way of municipal highways in the Project area;
- b. Use of municipal highways for trucking and hauling, as may be required; and
- c. Authority to sign the Project construction site as necessary to provide information and warning to the public.

5. Participation in Payments of Damages to Abutters. The MUNICIPALITY will pay for its proportionate share of any incidental damages that may occur to abutting or adjacent property owners or occupants due to the improvement, widening or relocation of right-of-way.

6. Maintenance of Traffic Control Devices and Street Lights. All signs (including parking regulatory signs), street lights, traffic signals and pavement markings shown on the Project plans will be installed by the STATE and thereafter maintained in place by the MUNICIPALITY at no cost to the STATE, including cost to provide electrical power, all in conformance with 23 V.S.A. Section 1025 (Standards) and the latest edition of the Federal Highway Administration's *Manual on Uniform Traffic Control Devices (MUTCD)*. Once constructed, no changes shall be made to the parking and/or traffic control features without the prior written approval of the STATE and the Federal Highway Administration.

7. Control of Right-of-Way. The MUNICIPALITY will not permit, now or hereafter, any installation of utilities or other work within the rights-of-way now controlled or acquired in connection with the Project until the MUNICIPALITY's legislative body has approved detailed plans showing the proposed work and issued a permit, all in accordance with 19 V.S.A. Section 1111. Before issuing a permit, the MUNICIPALITY will review any proposed utility installation for conformance with the current Utility Accommodation Policy of the Vermont Agency of Transportation.

8. Acquisition of Additional Right-of-Way. The MUNICIPALITY will assist the STATE in the acquisition of any additional right-of-way required for the satisfactory completion of the Project.

9. Relocation of Privately-Owned Utilities. The STATE will perform liaison and negotiation with utility companies, as necessary to relocate all privately-owned utilities that are in conflict with the Project. The MUNICIPALITY will cooperate with the STATE and utility companies in the timely relocation of privately-owned utility facilities that are in conflict with the Project.

10. Relocation of Municipal Utilities. The MUNICIPALITY will cooperate with the STATE and take such steps as may be necessary to accomplish the timely relocation of all utility facilities owned by the MUNICIPALITY that are in conflict with the Project. Any approved cost sharing shall occur as provided in a separate Utility Agreement to be entered into between the MUNICIPALITY and STATE.

The cost of utility relocation work accomplished by the contractor for the MUNICIPALITY and designated as "non-participating" shall be the sole responsibility of the MUNICIPALITY.

11. Traffic Control; Detours. During construction of the Project, the MUNICIPALITY will render such assistance as the STATE may request in the maintenance of traffic. If the Project route is closed to through traffic, the MUNICIPALITY will be responsible for selecting, signing, and maintaining any detour routes at no cost to the STATE, which shall be accomplished in conformance with 23 V.S.A. Section 1025 and the latest edition of the Federal Highway Administration's *Manual on Uniform Traffic Control Devices (MUTCD)*.

12. Maintenance of Roadways During Winter Suspension of Project Work. If construction of the Project is temporarily suspended for the winter season, the MUNICIPALITY will provide winter maintenance of roadways in the Project area, all in conformance with the provisions of the applicable edition of the Vermont Agency of Transportation's *Standard Specifications for Construction*, until construction operations resume in the spring.

13. Project Plans; Conformance to Applicable State and Federal Laws, Regulations and Construction Standards. The Project will be constructed as the STATE, in cooperation with the Federal Highway Administration (FHWA), may determine, all as detailed in the Project plans. Construction of the Project will conform to applicable FHWA rules and regulations and to the applicable edition of the Vermont Agency of Transportation's *Standard Specifications for Construction*, as well as special provisions that may be included in the Project's contract agreement.

14. Permits; Compliance with Permit Conditions. The MUNICIPALITY will be the applicant for any permits required for the Project and will adhere to all permit conditions. The MUNICIPALITY authorizes the STATE to apply for permits in the name of the MUNICIPALITY.

15. Defense of Project-Related Litigation. The MUNICIPALITY, in consultation with the STATE, will diligently defend all suits, actions or claims for damages sustained by abutting or adjacent property owners or occupants due to the Project. Any payments for settlements approved by the STATE or judgments entered by courts of competent jurisdiction will be considered by the STATE for participation as part of the overall costs of the Project.

16. Municipal Share; Invoices; Payment. The MUNICIPALITY will reimburse the STATE for one hundred percent (100%) of all non-participating Project costs and for **two and one half percent (2.5%)** of total participating Project costs, inclusive of preliminary engineering, right-of-way, utility costs where applicable, and the participating final construction costs. The MUNICIPALITY acknowledges that underruns or overruns in item quantities during construction, as well as change orders during construction, may increase or decrease quantities, thereby causing the total cost of construction to differ from the amount of the accepted bid.

The MUNICIPALITY will pay its proportionate share to the STATE, on the basis of monthly progress billings received from the STATE.

17. Cancellation or Default by State. If, due to the failure of the STATE, the Project is not constructed, then all costs incurred shall be borne in full by the STATE.

18. Cancellation or Default by Municipality. If at any time prior to award of a construction contract, the MUNICIPALITY no longer desires the Project, then the Project may be canceled subject to the following conditions:

- a. If the MUNICIPALITY does not approve the Conceptual Plans, the Project will be canceled, and the STATE shall reimburse the MUNICIPALITY for one hundred percent (100%) of all costs incurred by the MUNICIPALITY;

- b. If Conceptual Plans have been approved by the MUNICIPALITY and subsequent cost estimates (Preliminary Plans, Final Plans, or Low Bid) exceed the Conceptual Plans estimate by fifty percent (50%) or more, the MUNICIPALITY may request cancellation of the Project and shall be liable for its proportionate share of the total costs incurred to date, as specified in Section 16, above; and
- c. If Conceptual Plans have been approved by the MUNICIPALITY and cost estimates have not increased more than that specified in Section 18(b), above, the MUNICIPALITY may request cancellation of the Project, subject to payment by the MUNICIPALITY to the STATE for one hundred percent (100%) of all costs incurred to the date of the request.

19. Cancellation of Project Because of Circumstances Beyond Either Party's Control. If, due to circumstances beyond the control of the STATE or the MUNICIPALITY, the Project is not constructed, then all costs incurred shall be shared as specified in Section 16, above.

20. Records Available for Audit. The MUNICIPALITY 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 the 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.

21. Hazardous Material Contamination. The cost of handling, treatment and disposal of petroleum-contaminated soils or other hazardous material contamination in existence prior to construction of the Project shall be non-participating. Accordingly, any costs associated therewith shall be the sole responsibility of the MUNICIPALITY. Hazardous material generated during the construction of the project shall be disposed of as provided for in the project specifications and shall be a participating cost.

22. Maintenance of Project Improvements. The MUNICIPALITY agrees that if the Project is approved, constructed, and accepted by the STATE, then the MUNICIPALITY will maintain the Project in a manner satisfactory to the Agency of Transportation or its authorized representatives and make ample provisions each year for such maintenance. In this regard, the MUNICIPALITY acknowledges that its attention has been directed to the provisions of 19 V.S.A. Sections 304 (duties of selectboards) and 310 (highways, bridges and trails).

23. Indemnification. Upon its acceptance of a constructed project, the MUNICIPALITY shall thereafter defend, indemnify and hold harmless the STATE, its officers, agents, and employees from all manner of suits, actions, or claims brought for or on account of any injuries or damages received or sustained by any person, persons, or property that arise out of, relate to, or are in any way related to the work performed in the design and/or construction of the Project.

24. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, supersedes all prior oral or written negotiations, agreements, understandings and courses of dealing between the parties relating to the subject matter hereof and is subject to no understandings, conditions, or representations other than those expressly stated herein. This Agreement may only be modified or amended by a writing which states that it modifies or amends this Agreement and which is signed by both parties.

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

26. Independence; Liability. The MUNICIPALITY will act in an independent capacity and not as officers or employees of the STATE.

The MUNICIPALITY 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 MUNICIPALITY or of any agent of the MUNICIPALITY. The STATE shall notify the MUNICIPALITY in the event of any such claim or suit, and the MUNICIPALITY shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement, the MUNICIPALITY may request recoupment of specific defense costs and may file suit in the Washington Superior Court requesting recoupment. The MUNICIPALITY 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 MUNICIPALITY.

The MUNICIPALITY 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 MUNICIPALITY.

27. Fair Employment Practices and Americans with Disabilities Act. MUNICIPALITY agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6 (Fair Employment Practices), relating to fair employment practices, to the full extent applicable. MUNICIPALITY shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the MUNICIPALITY under this Agreement. MUNICIPALITY further agrees to include this provision in all subcontracts.

28. Set Off. The STATE may set off any sums which the MUNICIPALITY owes the STATE against the sums due the MUNICIPALITY 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.

29. Taxes Due to the State.

- a. MUNICIPALITY understands and acknowledges responsibility, if applicable, for compliance with STATE tax laws, including income tax withholding for employees performing services with the STATE, payment of use tax on property used within the STATE, corporate and/or personal income tax on income earned with the STATE.
- b. MUNICIPALITY certified under pains and penalties of perjury that, as of the date the contract is signed, the MUNICIPALITY 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. MUNICIPALITY understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the MUNICIPALITY 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. MUNICIPALITY also understands that STATE may set off taxes (and related penalties, interest, and fees) due to the State of Vermont, but only if the MUNICIPALITY has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the MUNICIPALITY has not further legal recourse to contest the amount due.

30. No Gifts or Gratuities. MUNICIPALITY 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.

31. Interpretation of Agreement. If an ambiguity or question of intent arises with respect to any provision of this Agreement, the Agreement will be construed as if drafted jointly by 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 Agreement.

32. Section Headings. The section headings contained in this Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

33. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

34. Definitions. For the purposes of this Agreement:

- a. "Participating Project Cost" means items deemed eligible for participation of federal-aid funds under applicable laws and the regulations of the Federal Highway Administration ("FHWA").
- b. "Non-participating Project Cost" means items deemed not eligible for participation of federal-aid funds under applicable laws and FHWA regulations.

IN WITNESS WHEREOF, the State of Vermont has caused its name to be subscribed this ____ day of _____, 20____, by Susan M. Minter [Chris Cole], its [Deputy] Secretary of Transportation and duly authorized agent.

STATE OF VERMONT
AGENCY OF TRANSPORTATION

By: _____
Susan M. Minter [Chris Cole]
[Deputy] Secretary of Transportation
and Duly Authorized Agent

APPROVED AS TO FORM:

DATED: 1-14-2015



ASSISTANT ATTORNEY GENERAL

IN WITNESS WHEREOF, the Town of Charlotte has caused its name to be subscribed this ____ day of _____, 20____, by _____, its _____ and duly authorized agent(s).

TOWN OF CHARLOTTE
(MUNICIPALITY)

Its Duly Authorized Agents

