RTE 116 paving

VERMONT

State of Vermont
Finance & Administration
Contract Administration
One National Life Drive
Drawer 33
Montpelier, VT 05633-5001
www.aot.state.vt.us

[phone] 802-828-2641
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tation

December 19, 2012

Melissa Ross, Clerk
Town of Hinesburg
10632 Route 116
Hinesburg, Vermont 05461

RE: STARKSBORO - HINESBURG STP 2930(1) - Contract No. FM0082

Dear Ms. Ross:

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 802-828-2641.

Sincerely,

Jon Winter
Special Agreements Administrator
Enclosure

VTrans Working to Get You There

FINANCE AND MAINTENANCE AGREEMENT
BETWEEN
STATE OF VERMONT
AGENCY OF TRANSPORTATION
AND
TOWN OF HINESBURG
FOR
STARKSBORO - HINESBURG STP 2930(1) CONTRACT NO. FM0082
EA/SUBJOB 2930001-100

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 Hinesburg, with its principal office at 10632 Rte 116, Hinesburg, Vermont 05461 (the "MUNICIPALITY").

W I T N E S S E T H :

WHEREAS, the MUNICIPALITY, under provisions of 19 V.S.A. Section 306 has requested funds for this project (the "Project") known as **Starksboro - Hinesburg STP 2930(1)** which will provide certain improvements to an infrastructure of the MUNICIPALITY, described as follows:

Project Location: Beginning at a point in the Town of Starksboro on Vt. 116 at MM 1.650 and extending Northerly along Vt. 116 a distance of 12.249 miles to MM 7.229 in the Town of Hinesburg.

Specific to this agreement is the reconfiguration and pavement marking of the intersection of TH 43 (Commerce Street) with Vt. 116.

Project Description: Work to be performed under this project includes cold planing and resurfacing of the existing highway with a leveling and wearing course, new pavement markings, guardrail, signs, video detection cameras and other related highway items.

Specific to this agreement is the reconfiguration and pavement marking of the intersection of TH 43 (Commerce Street) with Vt. 116.

and

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

WHEREAS, the MUNICIPALITY further desires that the STATE act, insofar as necessary, for the MUNICIPALITY in the preparation of plans and 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 State Funds to Project. That all costs of the Project except those which are non-participating shall be paid with one hundred percent (100%) STATE and federal funds (STATE: 18.92%; Federal: 81.08%).

2. Technical 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 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 or the STATE's authorized representative the following:

(a) Temporary entry onto the right-of-way of municipal highways in the Project area; and

(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 contractor 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 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. The STATE may bill the MUNICIPALITY on a monthly basis, as work is completed, and the MUNICIPALITY shall reimburse the STATE in full within thirty (30) days of receipt of each such bill.

11. Municipal Responsibility for Certain Requests for Change Orders, Design Changes, or Supplemental Agreements. The MUNICIPALITY will pay its proportionate share (100%) for additional costs resulting from MUNICIPAL requests for change orders, design changes, or supplemental agreement where such requests are made after contract award. Examples of such changes include but are not limited to upgrading crosswalks to inlaid colored pavement, night work limitations, etc.

12. 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 State or its contractor, with the cooperation of the MUNICIPALITY, will be responsible for selecting, signing, and maintaining a detour route at no cost to the MUNICIPALITY, 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*).

13. Maintenance of Roadways During Winter Suspension of Project Work. If construction of the Project is temporarily suspended for the winter season, the MUNICIPALITY will maintain 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.

14. 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 proposal form and contract agreement.

15. 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 permits shall be procured by the STATE in the name of the MUNICIPALITY.

16. 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.

17. Municipal Share; Invoices; Payment. The MUNICIPALITY will reimburse the STATE for one hundred percent (100%) of all non-participating Project 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.

18. 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.

19. 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 Preliminary 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; and

(b) If Preliminary Plans have been approved by the MUNICIPALITY and subsequent cost estimates (Final Plans or Low Bid) exceed the Preliminary 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 17, above; and

(c) If Preliminary Plans have been approved by the MUNICIPALITY and cost estimates have not increased more than that specified in Section 19(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.

20. 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 17, above.

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.

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. Suspension and Debarment: Non-federal entities are prohibited by Federal Executive Orders 12549 and 12689 from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of $100,000 and non-procurement transaction (grants to subrecipients). By signing this Grant Agreement, current Subrecipient certifies as applicable, that the contracting organization and its principals are not suspended or debarred by GSA from federal procurement and non-procurement programs.

25. 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.

26. 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.

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

28. 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 its Secretary of Transportation and duly authorized agent.

IN PRESENCE OF:

STATE OF VERMONT
AGENCY OF TRANSPORTATION

By: _____
Brian R. Searles/Susan M. Minter
[Deputy] Secretary of Transportation
and Duly Authorized Agent

STATE OF VERMONT
WASHINGTON COUNTY, ss.

At Montpelier, this ____ day of _____, 20_____, personally appeared Brian R. Searles/Susan M. Minter, [Deputy] Secretary of Transportation and duly authorized agent of the State of Vermont, and acknowledged the foregoing instrument by him signed to be his free act and deed and the free act and deed of the State of Vermont.

Before me,

_____
Notary Public
(My commission expires Feb. 10, 2015)

APPROVED AS TO FORM:
DATED: 12/14/2012

_____
ASSISTANT ATTORNEY GENERAL

IN WITNESS WHEREOF, the **TOWN OF HINESBURG** has caused this instrument to be signed by _____, its _____ and duly authorized agent, this _____ day of _____, 20___.

TOWN OF HINESBURG
("MUNICIPALITY")

By: _____

Its _____
and Duly Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY, ss.

At Hinesburg, this _____ day of _____, 20___, personally appeared _____ and acknowledged the foregoing instrument, by him/her as _____of the **TOWN OF HINESBURG** subscribed, to be his/her free act and deed and the free act and deed of the **TOWN OF HINESBURG.**

Before me,

_____
Notary Public
(My commission expires Feb. 10, 2015)