STATE OF VERMONT – Master Contract for Services available for use by the State of Vermont, its agencies and public bodies, through the Agency of Commerce & Community Development, Office of The Chief Marketing Officer

MASTER CONTRACTOR – **Spike Advertising**

1. **Parties:** This is a master contract for services between the State of Vermont, its agencies, departments, divisions and public bodies (hereafter called "State") and **Spike Advertising**, hereafter called "Contractor" with principal place of business at **85 Fiske Road, Alburgh, VT 05440**. Contractor's form of business organization is an **S Corporation**.

2. **Subject Matter**: The subject matter of this contract is services generally on the subject of **providing support for the marketing, promotional, informational and outreach activities of the agencies, departments, divisions and public bodies of Vermont state government on an as-needed, project-by-project basis**. Detailed services to be provided by the Contractor are described in Attachment A. Contractor will not be considered an agency of record and will not be guaranteed any level of business through this contract. Detailed services to be provided by the Contractor are described in Attachment A.

3. **Maximum Amount**: In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, **a sum not-to-exceed $9,999,999.00**.

4. **Contract Term**: The period of Contractor's performance **shall begin on November 1, 2018 and end on October 31, 2020 with the option for two (2) additional one-year extensions, but only as agreed upon and reduced to writing and signed by both parties**. The State shall pay Contractor only for work performed during the contract term.

5. **Prior Approvals**: If approval by the Attorney General's Office, Secretary of Administration or DII CIO/Commissioner is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by such persons.

   - Approval by the Attorney General's Office ☒ is ☐ is not required.
   - Approval by the Secretary of Administration ☒ is ☐ is not required.
   - Approval by the CIO/Commissioner of DII ☐ is ☒ is not required.
   - Approval by the CMO/ Chief Marketing Officer ☒ is ☐ is not required.

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:** This contract may be canceled by the State at any time by giving written notice at least thirty (30) calendar days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Contact persons**: The State's contact person for this contract is **Heather Pelham**; Telephone (802) 477-2727; email address heather.pelham@vermont.gov; The Contractor's contact person for this contract is **Ken Millman**; Telephone (802) 238-1522; email address ken@spikeadvertising.com

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MASTER CONTRACTOR – **Spike Advertising**

9. **Attachments:** This contract consists of 22 pages including the following attachments which are incorporated herein:

   A. Attachment A – Specifications of Work to be Performed
   B. Attachment B – Payment Provisions
   C. Attachment C – Standard State Provisions for Contracts and Grants (revision date 12/15/17)
   D. Attachment D – Other Contract Agreement Provisions
   E. Appendix I – Contractor Performance Measures
   F. Appendix II – Statement of Work Agreement and Marketing Firm Work Request Form (examples only, subject to change)

10. **Order of Precedence:** Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

   A. Standard Contract
   B. Attachment C – Standard State Provisions for Contracts and Grants (revision date 12/15/17)
   C. Attachment D – Other Contract Agreement Provisions
   D. Attachment A – Specifications of Work to be Performed
   E. Attachment B – Payment Provisions
   F. Appendix I – Contractor Performance Measures
   G. Appendix II –Statement of Work Agreement and Marketing Firm Work Request Form (examples only, subject to change)

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

Please sign in Blue ink only

By the State of Vermont:		**By the Contractor:**	
Date:	10/31/18	Date:	10.26.2018
Signature:	Ted Brady	Signature:	
Name:	Ted Brady	Name:	KENNETH MINNYAN
Title:	ACCD Deputy Secretary	Title:	PRESIDENT + DULY AUTHORIZED AGENT FOR SPIKE ADVERTISING
Agency:	Agency of Commerce & Community Development		

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MASTER CONTRACTOR – **Spike Advertising**

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

The purpose of this contract is to provide support for the marketing, promotional, informational and outreach activities of the agencies, departments and divisions of Vermont state government ('Departments'), as well as quasi-governmental entities, on an as-needed, project-by-project basis. Any state government entity may utilize the provisions of this agreement. It should be understood, therefore, that the Contractor will be dealing with a very diverse group of entities that nonetheless comprise one client—the state of Vermont.

Each Department will manage its own projects with the Contractor, select their contractor consistent with state procedures and contract provisions, and individually administer their budgets and develop communication and marketing plans and creative assets in support of their separate and distinct missions in close coordination with the Chief Marketing Officer (CMO). It is always the overriding objective of the State to identify where synergies and savings can be realized through collaboration and coordination. To that end, the CMO will exercise his/her authority to ensure that fundamental precept is followed.

The Contractor understands that during the term of this contract the State may or may not request from the Contractor some or all of the services described in the "Work to be Performed' section of this contract. In its sole discretion, the State may select any other contractors to perform these or similar services pursuant to any other State of Vermont contract bid process, as applicable. If in its sole discretion the State elects to request any such services from the Contractor, Contractor will provide such services as follows:

1. **Description of work:** The nature of the work may include, but not be limited to, the following services.

   1.1 **Strategy and Concept Development**: Under direction from the State, Contractor will develop strong concepts and strategies, articulated in the form of marketing plans and campaign proposals, to lay the foundation for effective and efficient creative work. Creative work should always have a strategy behind it, as well as anticipated outcomes that can be measured after creative materials are deployed, to gauge the success of the campaign. Services may include strategic positioning, goal development, brand planning, competitive market assessments, qualitative or quantitative market research, survey development and analysis, identification of target audiences, prioritization of tactics, budgeting, and development of performance metrics.

   1.2 **Creative Services**: Under direction from the State, Contractor will develop and implement creative assets to bring promotional campaigns to life, including collateral and identity materials, broadcast/video production, print/out-of-home/digital advertising assets, etc., to maximize impact, efficiency, and protection of the state brand/reputation and rights in the use of promotional designs. Creative design work, in the form of copywriting, graphic design, video production, etc., must be developed with an eye toward coordination across marketing initiatives to help the State 'speak with one voice,' while at the same time, maintaining a focus on the specific messages, targets and objectives of the individual Department or project.

1.3 **Digital Marketing and Web Development**: Online communication channels are an integral part of the strategies and tactics needed to connect with today's citizens and consumers. Services may include, but are not limited to: competitive market analysis and strategy development; discovery and primary research involving stakeholders; user experience design and the development of user personas and experience mapping; content audits, content mapping and information architecture; content development, including data visualization and other interactive content; design of style and user guides; copywriting; social media integration; Americans with Disabilities Act compliance; keyword analysis and search engine optimization; search, email, display, video and social marketing; and analytics and campaign reporting.

Any website creative work must be coordinated with the State of Vermont's Agency of Digital Services (ADS) and/or IT vendors as applicable, as well as with the Chief Marketing Officer. Any work performed on state websites must comply with the State of Vermont Web Look and Feel Standard, with designs approved in advance of buildout by the Chief Marketing Officer and the Director of Web Services. Vendors should also be aware that a (Drupal-based) state web template exists and should be utilized unless a strong business case can be made that a state agency needs to build its own custom solution outside the template. Such exceptions must be approved by ADS and the CMO in writing before work can start on a custom build.

1.4 **Social Media and Public Relations**: While Departments are each individually responsible for maintaining their own content on social media channels, there are occasionally calls for the Contractor to recommend ways to integrate social media outreach into an overall marketing campaign. The scope of this work may include strategic and content calendar planning; social media guidelines to include persona or voice, graphic elements, and key messages; content development; and/or training of Department staff on usage of social media channels and analysis of traffic reports and analytics.

Similarly, public relations is a service that tends to be handled by Department staff as needed. However, projects may arise in which public relations, outreach and earned media are critical components of overall marketing and communications success, and where the Contractor may play a role. Scope may include overall strategy, outreach to media to generate targeted publicity, writing social media content or press releases, coordinating special events and media visits, conducting communication audits, and monitoring of press coverage and story placements.

1.5 **Production Management**: Contractor must have demonstrated expertise in managing production schedules for a full range of multimedia projects. The Contractor must provide expertise in the vendor and product selection and production oversight of multiple forms of promotional creative (e.g. print runs; radio and broadcast/cable/video advertising; outdoor installations; vehicle wraps; banners; signs; tradeshow displays, etc.). Contractor must plan for coordination of bids and production runs to achieve the best pricing and track projects during production for quality and timeliness.

Finally, a key piece of production management across all media is the acquisition of images with usage rights and license agreements appropriate to the project and favorable to the State. The Contractor must negotiate image use rights on behalf of the State.

2. **Process:** Departments will follow a Statement of Work (SOW) process for all marketing and creative projects. Departments will develop a Work Request using the Marketing Firm Work Request Form and may solicit quotes from the Contractor and/or other contracted vendors for a specific project or task. (Please see Appendix II for an example of this form.) The requirement to solicit quotes from all Master Contractors for Marketing and Creative Services or just one contractor will be based on the project cost and guidelines as outlined in the CMO's Guide to Working with Master Contractors. The Master Contractors may respond to the Work Request with a project proposal which will allow for the determination of which contractor or contractors will best fulfill the needs of a specific project or task in a streamlined and simplified procedure.

3. **Contract Oversight:** The services performed under this contract shall be reviewed by the State assigned Contract Manager and will include deliverables and performance expectations.

4. **Work Issuance:** Progress against the work to be performed, under this contract, will be reviewed by the State's assigned staff (hereafter called "Contract Manager"). Contract Manager may assign some or all oversight responsibilities to another staff designee, and Contract Manager will notify Contractor prior to such occurrence. Changes to time, scope, and/or resources shall be discussed in advance and the impacts to the project will be determined. If the scope of work is changed causing work outside the contract's scope of services, the additional work will be reduced to writing by the State and Contractor in the form of an amendment, and only as pre-approved by the State.

5. **Work Required:**

   5.1 Other similar work as agreed upon between the State and Contractor.

6. **Other Requirements**:

   6.1 Any notices, information pamphlets, press releases, research reports or similar other publications prepared and released in written or oral form by the Contractor under this contract shall be approved/reviewed by the State prior to release.

   6.2 **Copyright:** Upon full payment by the State, all products of the Contractor's work, including but not limited to outlines, reports, charts, sketches, drawings, artwork, designs, plans, photographs, videos, specifications, estimates, computer programs, or similar documents, becomes the sole property of the State of Vermont and may not be copyrighted or resold by Contractor. The Contractor will exercise due care in creating or selecting material for publication to ensure that such material does not violate the copyright, trademark, or similar rights of others. To the extent the Contractor uses copyrighted materials in performance of work under this Contract, the Contractor shall document and provide the state with the precise terms of the licensed use granted to the State by the owner of the copyright for future use of the copyrighted material. The Contractor shall not

use any copyright protected material in the performance of the work under this contract that would require the payment of any fee for present or future use of the same by the State.

6.3 Contractor will be evaluated on work performance under this contract, see Appendix I.

(End of Attachment A)

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MASTER CONTRACTOR – **Spike Advertising**

ATTACHMENT B
PAYMENT PROVISIONS

The State shall pay Contractor a sum not to exceed **$9,999,999.00** as follows:

1. A certificate of insurance must be submitted prior to commencement of work and release of payments.

2. Copies of any subcontract agreements and tax certifications must be submitted and fully complied with.

3. **Invoicing:** Contractor will submit monthly invoicing on a work-completed basis directly to the State of Vermont agency, department, division or public body that is identified in each Statement of Work under this contract. Payment terms shall be Net 30.

   Important: All invoices must include "State of Vermont Master Contract Number 37262" that is assigned to this contract, as a reference. Invoices received that do not include the Contract number will not be processed.

4. Contractor shall be paid based on documentation and itemization of work performed and included in invoicing. Invoicing must contain a detail of services including dates and hours of work performed and rates of pay. Invoicing must also contain a detail of items and cost for any State pre-approved reimbursable expenses (parts, materials travel, etc.) stated below. The State shall not be responsible for any expenses of the Contractor unless specifically stated below.

5. SERVICES - Contractor shall be paid for services based on the following maximum hourly rates or at lower rates included in the applicable Statement of Work or Change Order executed by the Contractor and relevant State entity:

Service:	Definition:	Max. Hourly Rate:
Account Management/ Coordination	Direct and coordinate the day-to-day agency efforts on behalf of the client's product and/or service. May include tracking client budgets, moving projects through the agency from start to finish, coordinating schedules and meeting client deadlines. Work usually done by Account Executive or Account Supervisor.	$125
Broadcast/Video Development and Production	Coordinate, oversee and develop multimedia content based on creative platform. May include script development and storyboarding, planning shoots and scouting locations, scheduling, securing and directing crew or talent; and managing editing process. Work usually done by Producer or Multi-Media Designer.	$125

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Service:	**Definition:**	**Max. Hourly Rate:**
Copywriting	Implementing the creative concept into headlines, scripts and body copy. Work usually done by Copywriter.	$125
Creative/Concept Development	Develop the strategic platform for campaign concepts, including category, competitive and client research and analysis. Develop overall look/feel/tonality of overarching brand. Work usually done by Creative Director and/or Associate Creative Director.	$125
Editing	Reviewing materials for accuracy (usually to a source document provided by client) and style (according to purpose and client industry norms, usually the current editions of Associated Press Stylebook or Chicago Manual of Style).	$125
Graphic Design	Implementing the creative concept into all visual materials through the use of color, type, imagery and format. Develop the overall layout and production design across print and electronic media. Work usually done by Art Director or Graphic Artist.	$125
Production/ Traffic Management	Overseeing the process of creating and delivering an end product. May include estimating, negotiating, distributing, scheduling, purchasing and proofing for quality control. Work usually done by Production Manager or Traffic Manager.	$125
Public Relations	Conceives and implements public relations strategies. Writes and edits press releases; pitches and places stories; develops media relationships; monitors media activities; and responds to media requests. Work usually done by Director of Communications or Public Relations Manager.	$125
Social Media	Attract and engage target audiences by creating, monitoring and managing all published content such as text, images and video. Usually performed by Social Media Manager.	$125
Strategic Planning	Brand planning, strategic planning and analytical activity. Provide deeper insights into the dynamics of client businesses through the development of disciplined and thorough sales, marketing, and consumer analyses. Work usually done by Brand Strategist, Director of Client Services, Director of Marketing and/or Account Supervisor.	$125
Website Design	Create and implement design for websites based on creative platform. May include development of information architecture, wireframes, graphic design, and content. Work usually done by Digital Strategist, UX Designer, Web Designer or Web Developer.	$125

The Contractor will not be compensated for any time spent in responding to a Work Request or developing a Statement of Work. Travel time for client meetings will also not be billable.

6. **EXPENSES**: Contractor shall not buy materials and resell to the State at a profit. The State also does not pay a commission for services. Specifically, subcontract work and/or any media expenses shall be billed to the State at net.

   All expenses must be pre-approved in advance by the Contract Manager and also included in the terms and maximum amount identified in each Statement of Work under this contract. Expenses may include lodging, meals, incidentals, and any other expenses deemed necessary in advance by the State. Contractor must submit detailed receipts to the State for reimbursement of all such expenses, except mileage.

   The State will not reimburse for the purchase of alcohol, all such purchases must be removed from all expense reimbursement requests. Mileage, for the use of Contractor's personal or company vehicle, will be reimbursed at the State of Vermont's current given rate at the time the expense is incurred, **only if mileage expenses have been pre-approved in advance by the Contract Manager** and also included in the terms and maximum amount identified in each Statement of Work under this contract.

7. In the event federal or state funds appropriated to the State of Vermont become unavailable, reduced, or reallocated to a purpose other than the work described in this Agreement, the State may immediately suspend or cancel this Agreement, and the State shall have no obligation to pay the Contractor for work performed after the Contractor's receipt of written notice calling for suspension of the work or cancellation of the Agreement.

(End of Attachment B)

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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 written 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)

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MASTER CONTRACTOR – **Spike Advertising**

ATTACHMENT D
OTHER CONTRACT AGREEMENT PROVISIONS

1. **Cost of Materials:** Contractor will not buy materials and resell to the State at a profit.

2. **Identity of workers:** The Contractor 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. [**Ken Millman**]. 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.

3. **Ownership of Equipment:** Any equipment purchased or furnished to the Contractor by the State under this Contract Agreements provided on a loan basis only and remains the property of the State.

4. **Contractor's Liens:** Contractor will discharge any and all contractors or mechanics' liens imposed on property of the State through the actions of subcontractors.

5. **State Minimum Wage:** The Contractor will comply with state minimum wage laws and regulations, if applicable.

6. **Health Insurance Portability and Accountability Act (HIPAA)**: The confidentiality of any health care information acquired by or provided to the Contractor shall be maintained in compliance with any applicable State or federal laws or regulations.

7. **Equal Opportunity Plan:** If they are required by the Federal Office of Civil Rights to have a plan, the Contractor must provide a copy of the approval of their Equal Opportunity Plan.

(End of Attachment D)

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MASTER CONTRACTOR – **Spike Advertising**

APPENDIX I
CONTRACTOR PERFORMANCE MEASURES

The Contractor will be evaluated on its services performance on this Contract, which may be subject to more detailed evaluation criteria.

Low performance scores may result in no further contracts with the State of Vermont

Performance Measures

Contractor will be evaluated on the following performance during and at the completion of this Contract.

	Failed Expectations	Met Expectations	Exceeded Expectations
Contractor Name: Spike Advertising Contract #37262			
Demonstrated expertise in development and execution of strategies to accomplish objectives and outcomes identified in the Statement of Work.			
Demonstrated knowledge and expertise in both traditional and new media, or earned media, that maximized reach and frequency goals for a media campaign or communications plan.			
Met or exceeded project estimates and timelines.			
Overall quality of work completed.			
Statement of Work, project reporting and documentation submitted with billing as required in contract.			

What did the contractor do well (**in detail**)? _____

_____

_____

What **specific** areas of contractor performance could be improved? _____

If problems or areas of concern, please explain (or enter n/a) _____

_____

Name of person submitting form (Print) _____ Date _____

(End of Appendix I)

APPENDIX II: STATEMENT OF WORK AGREEMENT AND MARKETING FIRM WORK REQUEST FORM

(Examples only, subject to change)

Statement of Work Agreement

Date: _____
ACCD Master Contract #: _____
VISION Vendor #: _____
(optional) Agency or Department Generated SOW #: _____

Project: [Enter Project Title]

This is a Statement of Work Agreement ("SOW Agreement") between the State of Vermont, [Enter Agency and/or Department] (hereafter called "State") and [Enter Vendor Name], with principal mailing address of [Enter Vendor Full Mailing Address], (hereafter called "Contractor"). This SOW Agreement is entered into in accordance with Master Contract #[Enter Master Contract Number] ("Master Agreement"), and all of the terms and conditions of the Master Agreement are herein incorporated and made a part hereto. Separate from the Master Agreement, the State may cancel the SOW Agreement at any time by giving written notice at least thirty (30) calendar days in advance. In such event, Contractor shall be paid under the terms of the Master Contract for all services provided to and accepted by the State under this SOW Agreement prior to the effective date of cancellation.

Time for Performance

The term of this SOW Agreement shall begin on [Enter Start Date] and end on [Enter End Date] (the "Initial Term"). The Initial Term may be extended as the parties may agree. This SOW Agreement shall terminate upon the termination of the Master Agreement.

Scope of Work

The Contractor shall, in full satisfaction of the specific requirements of this SOW Agreement, provide the services set forth in Master Agreement Attachment A and this SOW Agreement Attachment A ("[Enter Title of Scope of Work, Proposal, or 'Marketing Form Work Request Form']").

Order of Precedence

The parties agree that, to the extent there is a real or perceived conflict between the Master Agreement and the SOW Agreement, the order of precedence of the documents, as expressed in the Master Agreement shall control. The terms and conditions of the Master Agreement remain in full force and effect and are not superseded by the SOW Agreement.

Payment

The Contractor and the State shall comply with the payment provisions set forth in Master Agreement Attachment B. The source of funds for this SOW Agreement are as follows, by percentage: [Enter Percentage] Federal Funds; [Enter Percentage] General Funds; [Enter Percentage] Other Funds.

Standard Contract Provisions

The Contractor and the State shall comply with the provisions set forth in Master Agreement Attachment C.

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MASTER CONTRACTOR – **Spike Advertising**

Date: _____
ACCD Master Contract #: _____
VISION Vendor #: _____
(optional) Agency or Department Generated SOW #: _____

Waivers

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

WE THE UNDERSIGNED parties have read, understand, and agree to be bound by all of the terms and conditions of this SOW Agreement and the Master Agreement.

STATE OF VERMONT,

Date: _____

Signature: _____

Name: _____

Title: _____

Agency: _____

CONTRACTOR,

Date: _____

Signature: _____

Name: _____

Title: _____

Vendor: _____

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MASTER CONTRACTOR – **Spike Advertising**

Attachment A: Marketing Firm Work Request Form

Date: _____
ACCD Master Contract #: _____
VISION Vendor #: _____
(optional) Agency or Department Generated SOW #: _____

Project: [Enter Project Title]

Release Date: Click here to enter a date.

Response Due: Click here to enter a date.

Agency/Department

Name:	Click here to enter text.	Contact:	Click here to enter text.
Address:	Click here to enter text.	Contact Phone:	Click here to enter text.
	Click here to enter text.	Contact E-mail:	Click here to enter text.

Timeline

Contract Start Date: Click here to enter a date.

Is this part of a previous marketing campaign? Yes ☐ No ☐

Contract End Date: Click here to enter a date.

First Due Date for Creative Materials: Click here to enter a date.

Budget

"Gold" / Maximum budget for project:	Click here to enter text.
"Silver" / 90% of max, or other amount as specified:	Click here to enter text.
"Bronze" / 80% of max, or other amount as specified:	Click here to enter text.

If the "Silver" and "Bronze" fields above are filled in by the requesting state agency, then responding marketing firms must offer proposals at each of those budget levels. This information gives state officials a way to gauge and compare value in the proposals they receive.

Maximum Allowable for Creative Development? Click here to enter text.

Other Budget Comments/Restrictions/Incentives?

Click here to enter text.

Background

Click here to enter text.

Goals

Click here to enter text.

Target Audience

Click here to enter text.

Timeline

Click here to enter text.

Performance Measures/Reporting Requirements?
Click here to enter text.

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MASTER CONTRACTOR – **Spike Advertising**

Date: _____
ACCD Master Contract #: _____
VISION Vendor #: _____
(optional) Agency or Department Generated SOW #: _____

Items Requested

	Need	Want	Optional	Don't Need
Logo/Branding	☐	☐	☐	☐
Marketing Plan	☐	☐	☐	☐
Media Plan/Buy	☐	☐	☐	☐
Print Collateral Materials *(Brochures, Folders, Posters)*	☐	☐	☐	☐
Website Development	☐	☐	☐	☐
Website Content	☐	☐	☐	☐
Exhibit/Display	☐	☐	☐	☐
Direct Mail	☐	☐	☐	☐
Event	☐	☐	☐	☐
Multimedia Production *(Video/Radio)*	☐	☐	☐	☐
Public Relations	☐	☐	☐	☐

Other Notes

Click here to enter text.