DVHA Routing Form

Revision Date 5/1/12

Type of Agreement: **Contract** Agreement #: **21410** Form of Agreement: **Amendment** Amendment #: **4**

Name of Recipient: **Wakely Consulting Group** Vendor #: **308514**

Program Manager : **Lindsey Tucker** Phone #: **802-871-7523**

Agreement Manager: **Meaghan Kelley** Phone #: **802-871-3302**

Brief Explanation of Agreement: **Extends the contract term an additional year**

Start Date: **2/10/2012** End Date: **4/30/2014** Maximum Amount: **$5,045,750.14**

Amendments Only: Maximum Prior Amount: **$5,045,750.14** Percentage of Change: **0.00%**

Bid Process (Contracts Only): ☒ Standard ☐ Simplified ☐ Sole Source ☐ Statutory ☐ Master Contract SOW

Funding Source

ACA Exchange 93.525	**$5,030,009.14**		
Special: IDF	**$15,741.00**		

Contents of Attached Packet

☒ AA-14
☐ Sole Source Memo
☒ Qualitative/Justification Memo
☒ Attachments A, B, C & F
☐ Attachment D - Modifications to C & F
☐ Attachment E - Business Associate Agreement
☐ Attachment G - Academic Research
☐ MOU
☒ Other: **Base, Amendment 1 & 2**

Reviewer		Reviewer Initials	Date In	Date Out
DVHA Grant & Contract Administrator	**Kate Jones**	K.J.		
DVHA BO	**Carrie Hathaway**	C.H.		
DVHA Commissioner or Designee	**Mark Larson, Commissioner**	M.L.		
AHS Attorney General	**Seth Steinzor, AAG**	S.S.		
Following Approvals for Contracts Only:				
AHS CIO				
AHS Central Office	**Diane Nealy**	D.N.		
AHS Secretary	**Dixie Henry**	D.H.		

Vision Account Codes:

☐ FFATA Entry ☐ Grant Tracking Module Vision PO #: Initials & Date: Approval & B/C:

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION - - - - - - - - - - Form AA-14 (8/22/11)

Note: All sections are required. Incomplete forms will be returned to department.

I. CONTRACT INFORMATION:

Agency/Department: AHS/ DVHA **Contract #:** 21410 **Amendment #:** 4

Vendor Name: Wakely Consulting Group VISION Vendor No: 308514

Vendor Address: One Constitution Center, Boston, MA 02129

Starting Date: 2/10/2012 **Ending Date:** 4/30/2014 **Amendment Date:** 4/29/2013

Summary of agreement or amendment: Extend the contract term one additional year

II. FINANCIAL INFORMATION

Maximum Payable: $5,045,750.14 Prior Maximum: $ 5,045,750.14 Prior Contract # (If Renewal):

Current Amendment: $0.00 Cumulative amendments: $ % Cumulative Change: 0.00 %

Business Unit(s): 3410; ; - [notes:] **VISION Account(s): 507600;**

II. PERFORMANCE INFORMATION

Does this Agreement include Performance Measures tied to Outcomes and/or financial reward/penalties? ☒ Yes ☐ No

Estimated Funding Split:	G-Fund %	S-Fund %	F-Fund 99.70 %	GC-Fund %	Other 0.30 %

III. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract or procurement grant and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:

☒ Standard bid or RFP ☐ Simplified Bid ☐ Sole Sourced ☐ Qualification Based Selection ☐ Statutory

IV. TYPE OF AGREEMENT & PERFORMANCE INFORMATION

Check all that apply: ☐ Service ☒ Personal Service ☐ Architect/Engineer ☐ Construction ☐ Marketing ☐ Information Technology ☐ Other, describe:

V. SUITABILITY FOR CONTRACT FOR SERVICE

☒ Yes ☐ No ☐ n/a If this is a Personal Service contract, does this agreement meet all 3 parts of the "ABC" definition of independent contractor? (See Bulletin 3.5) If NO, then contractor must be paid through Payroll

VI. CONTRACTING PLAN APPLICABLE:

Are one or more contract or terms & conditions provisions waived under a pre-approved Contracting Plan? ☐ Yes ☒ No

VII. CONFLICT OF INTEREST

By signing below, I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.

☐ Yes ☒ No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

VIII. PRIOR APPROVALS REQUIRED OR REQUESTED

☒ Yes ☐ No Agreement must be approved by the Attorney General under 3 VSA §311(a)(10) (personal service)

☒ Yes ☐ No I request the Attorney General review this agreement as to form
No, already performed by in-house AAG or counsel: _____ (initial)

☐ Yes ☒ No Agreement must be approved by the Comm. of DII; for IT hardware, software or services and Telecommunications over $100,000

☐ Yes ☒ No Agreement must be approved by the CMO; for Marketing services over $15,000

☐ Yes ☒ No Agreement must be approved by Comm. Human Resources (privatization and retiree contracts)

☒ Yes ☐ No Agreement must be approved by the Secretary of Administration

IX. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL D.N. E.B.

I have made reasonable inquiry as to the accuracy of the above information:

Date	Agency / Department Head	Date	Agency Secretary or Other Department Head (if required)
	E-SIGNed by Mark Larson on 2013-Apr-29		E-SIGNed by Dixie Henry on 2013-Apr-30

Date	Approval by Attorney General	Date	Approved by Commissioner of Human Resources
	E-SIGNed by Seth Steinzor on 2013-Apr-30		

Date	CIO	Date	CMO	Date	Secretary of Administration
					E-SIGNed by Michael Clasen on 2013-Apr-30

VERMONT

State of Vermont
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston VT 05495-2807
dvha.vermont.gov

Agency of Human Services
[Phone] 802-879-5900
[Fax] 802-879-5651

To: Jeb Spaulding, Secretary of Administration M.C.

From: Mark Larson, Commissioner of DVHA M.L.

Date: April 26, 2013

RE: Wakely Consulting Group Contract #21410, Amendment 4 Justification

CONTRACT TERM: February 10, 2012 – April 30, 2014 No Cost Amendment

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In January 2012, DVHA was awarded a Level 1 Exchange Establishment Grant from the federal Department of Health and Human Services (HHS) to further its Exchange planning and development efforts. DVHA has been working with Wakely Consulting for assistance with the planning, design, and development of Vermont's Health Benefits Exchange.

This amendment extends the agreement until April of 2014. It is imperative to the success of the Health Insurance Exchange to continue work under this agreement. Due to delays in the negotiation process, including the passing of a family member of a key negotiator, DVHA was unable to finalize a Scope of Work and Payment Provisions in time to add those changes into Amendment 4. DVHA will be working tirelessly to add these changes into the agreement over the next month.

This contract complies with all mandatory provisions of AOA Bulletin 3.5. DVHA looks forward to the approval of this contract amendment.

AMENDMENT

It is agreed by and between the State of Vermont, Department of Vermont Health Access (hereafter called the "State") and Wakely Consulting Group, Inc. (hereafter called the "Contractor") that the contract on the subject of assisting with planning, designing, and developing Vermont's Health Benefits Exchange, effective February 10, 2012, is hereby amended effective April 29, 2013, as follows:

1. **By deleting Section 4 (Contract Term) on page 1 of 7, as amended by Amendment 3, and substituting in lieu thereof the following Section 4:**

   4. Contract Term. The period of the Contractor's performance shall begin on February 10, 2012 and end on April 30, 2014.

2. **By deleting, beginning on page 11 of 14 of Amendment 2, Attachment C Customary Provisions (revised 7/1/12) and substituting in lieu thereof Attachment C Customary Contract Provisions (revised 11/7/12), which is an attachment to this amendment beginning on page 2 of 5.**

This amendment consists of 5 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract, (#21410) dated February 10, 2012 shall remain unchanged and in full force and effect.

STATE OF VERMONT

DEPARTMENT OF VERMONT HEALTH ACCESS

E-SIGNed by Mark Larson
on 2013-Apr-30

MARK LARSON, COMMISSIONER DATE

CONTRACTOR

WAKELY CONSULTING GROUP, INC.

E-SIGNed by Patrick Holland
on 2013-Apr-30

PATRICK HOLLAND, MANAGING DIRECTOR DATE

ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

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

3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.

4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.

5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

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

   The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

   After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

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

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

   Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

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

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

   Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: $1,000,000 combined single limit.

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

   Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of ***$N/A*** per occurrence, and ***$N/A*** aggregate.

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

9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a single audit is required for the prior fiscal year. If a single audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

A single audit is required if the subrecipient expends $500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a single audit is required.

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

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

12. **Set Off**: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. **Taxes Due to the State**:

    a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

    b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

    c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

    d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

    a. is not under any obligation to pay child support; or
    b. is under such an obligation and is in good standing with respect to that obligation; or

c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

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

18. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: http://bgs.vermont.gov/purchasing/debarment

19. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of $1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.