

STATE OF VERMONT



REQUEST FOR PROPOSALS
for a
CLEAN HEAT MEASURE
CHARACTERIZATION
TECHNICAL CONSULTANT
for the proposed
CLEAN HEAT STANDARD
with
the Vermont Public Utility Commission

STATE OF VERMONT

Request for Proposals
for a
Clean Heat Measure Characterization
Technical Consultant
for the proposed
Clean Heat Standard
with
the Vermont Public Utility Commission

RFP RELEASED ON: September 29, 2023

QUESTIONS DUE: October 13, 2023

PROPOSAL DUE DATE: October 30, 2023

This RFP is issued by:

The State of Vermont
Public Utility Commission

Please email proposals to:

Karen Hutchinson
Business Manager
puc.businessmanager@vermont.gov

Please also send a hardcopy with one original signature to:

Karen Hutchinson
Business Manager
of the Vermont Public Utility Commission
112 State Street
Montpelier, VT 05620-2701

Background

The Vermont Legislature recently enacted legislation “to affordably meet mandated greenhouse gas reductions for the thermal sector through efficiency, weatherization measures, electrification, and decarbonization.”¹ In Act 18 of 2023 (the Affordable Heat Act), the Legislature directed the Vermont Public Utility Commission (“Commission” or “PUC”) to undertake the design of a proposed Clean Heat Standard to assist the State in meeting its legal obligation to reduce greenhouse gas emissions to specific levels by 2030, and 2050.² The Act instructs the Commission to work with stakeholders, affected entities, and the public to carefully craft this potential program, and the Commission is committed to a robust public process.

Under the Clean Heat Standard legislation, obligated parties would need to annually acquire specified amounts of “clean heat credits,” defined as tradeable, nontangible commodities that represent the amount of greenhouse gas reduction attributable to a “clean heat measure.” “Clean heat measures” are defined as fuel delivered and technologies installed to end-use customers in Vermont that reduce greenhouse gas emissions from the thermal sector. Examples of clean heat measures include thermal efficiency improvements and weatherization; air-source, ground-source, and other heat pumps; heat pump water heaters, and utility-controlled electric water heaters; solar hot water systems; electric appliances providing thermal end uses; advanced wood heating; noncombustion or renewable energy-based district heating services; the supply of sustainably sourced biofuels; the supply of green hydrogen; the replacement of a manufactured home with a high-efficiency manufactured home and weatherization or other efficiency or electrification measures in manufactured homes; and line extensions that connect facilities with thermal loads to the grid.

Act 18 directs the Commission to hire a third-party consultant to develop clean heat measure characterizations and relevant assumptions, including carbon dioxide equivalents (“CO₂e”) lifecycle emissions analyses.³ Act 18 directs the Commission to review and approve the emission analyses and associated assumptions developed by the Consultant annually.⁴ The Consultant will play a critical role in the design of the potential Clean Heat Standard and will receive input and

¹ Public Act No. 18 (2023 Vt., Bien. Sess.).

² Pursuant to the Vermont Global Warming Solutions Act of 2020 (“GWSA”), as codified in 10 V.S.A. § 578, “Vermont shall reduce emissions of greenhouse gases from within the geographical boundaries of the State and those emissions outside the boundaries of the State that are caused by the use of energy in Vermont, as measured and inventoried pursuant to section 582 of this title (Greenhouse gas inventories; registry), by not less than 26 percent from 2005 greenhouse gas emissions by January 1, 2025...; not less than 40 percent from 1990 greenhouse gas emissions by January 1, 2030...; [and] not less than 80 percent from 1990 greenhouse gas emissions by January 1, 2050”. Over one-third of Vermont’s greenhouse gas emissions in 2018 came from the thermal sector.

³ This requirement is codified in 30 V.S.A. § 8128(c). (“The [Vermont Public Utility] Commission shall hire a third-party consultant responsible for developing clean heat measure characterizations and relevant assumptions, including CO₂e lifecycle emissions analyses. The [Technical Advisory Group] shall provide input and feedback on the consultant’s work. The Commission may use appropriated funds to hire the consultant.”)

⁴ 30 V.S.A. § 8128(d).

feedback from a soon-to-be-formed Technical Advisory Group, the Commission, and via public comments.⁵

On or before January 15, 2025, the Commission will present to the Legislature a proposed Clean Heat Standard rule and written report addressing, among other topics, impacts of the proposed Standard on customer rates and fuels bills, and net impacts on total statewide spending on thermal-sector end uses, fossil fuel reductions, and greenhouse gas emission reductions. Both the rule and the written report will be significantly informed by the work of the Consultant.

Initial Project Timeline and Term

The Consultant will begin immediately upon execution of a contract pursuant to this request for proposal (“RFP”) and continue through May 2025. The contract term may be extended for additional periods of up to 12 months subject to an agreement of the Parties and legislative approval of the Clean Heat Standard and additional funding. The Consultant will be expected to deliver draft clean heat measure characterizations and relevant assumptions, including CO₂e lifecycle emissions analyses, by August 31, 2024. Subsequent work may include public presentations of draft findings, consideration of public feedback, amendments to measure characterizations in response to public feedback or at the direction of the Commission, compiling a final Clean Heat Standard Technical Reference Manual by December 31, 2024, and providing relevant technical support to the Commission, as needed, during the 2024 and 2025 Vermont legislative sessions.

Overview of Responsibilities

The primary responsibility of the Consultant will be to develop clean heat measure characterizations and relevant assumptions, including CO₂e lifecycle emissions analyses related to the recently enacted Act 18, with feedback from the Technical Advisory Group and subject to review and approval of the Commission. The Consultant will bring expertise in lifecycle emissions analysis to assess the overall greenhouse gas impacts of various heating technologies and fuels.

The Consultant will develop clean heat measure characterizations and assist the Commission and Technical Advisory Group in establishing credit values for those measures. At a minimum, the Consultant will develop clean heat measure characterizations consistent with industry best practices for the eligible measures listed in 30 V.S.A. § 8127(d). These characterizations will be used by the Consultant to develop clean heat credit values for these measures pursuant to 30 V.S.A. § 8127(c). The Consultant will present its findings to the Commission and the Technical Advisory Group, to discuss its methods and results, accept feedback from the Technical Advisory Group and members of the public, and incorporate amendments at the direction of the Commission. The Consultant will assist the Technical Advisory Group and the Commission in compiling final clean heat measure characterizations and credit values into a publicly available Clean Heat Standard Technical Reference Manual. The Consultant will be available to provide technical support regarding its work to the Commission, as needed, throughout the 2024 and 2025 Vermont

⁵ 30 V.S.A. §§ 8128(c) and (d).

legislative sessions. The Consultant will leverage its technical expertise to recommend how the Commission could effectively incorporate its analyses throughout the Clean Heat Standard design process.

RFP Responses

All responses to this RFP must specify:

- (1) The personnel who would work on the development of clean heat measure characterizations and CO₂e lifecycle emissions analyses, including their qualifications to complete such work;
- (2) The hourly or monthly rate of all personnel involved in the process;
- (3) A total maximum dollar amount that the Consultant would charge for its work under the contract with the Commission; and
- (4) A proposed schedule for completing the analyses. The schedule should incorporate suggested milestone deliverables and points at which the Consultant will report to the Commission and the Technical Advisory Group.

Responses will be evaluated by the Commission based on the following criteria:

- 40%: Responsiveness of the bid to the requirements of the RFP;
- 25%: The related experience and past performance of the Consultant;
- 20%: The qualifications of the personnel and staff; and
- 15%: The overall maximum cost of the Consultant's services.

Contract Terms

The selected bidder will be expected to sign a contract with the State, including the Standard Contract Form, Attachment A, Attachment B, Attachment C, and Attachment D as attached to this RFP for reference. Upon completion of the evaluation process, the State may select one or more bidders with which to negotiate a contract, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State. In the event the Commission is not successful in negotiating a contract with a selected bidder, the Commission reserves the option of negotiating with another bidder, or to end the proposal process entirely.

If a bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Note that exceptions to contract terms may cause rejection of the proposal.

Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State.

Questions Regarding the RFP

Any questions regarding the RFP and its requirements must be received no later than October 13, 2023, by Karen Hutchinson, Business Manager, via email at puc.businessmanager@vermont.gov,

Questions or comments not raised in writing on or before the last day of the question period are thereafter waived.

Answers to all questions will be posted on the Commission's website by October 20, 2023.

Deadlines for Responses

Responses to this RFP must be submitted to Karen Hutchinson, Business Manager, via email at puc.businessmanager@vermont.gov

Responses must be received no later than October 30, 2023.

Please also submit responses to the RFP by mail to Karen Hutchinson, Business Manager of the Vermont Public Utility Commission, 112 State Street, Montpelier, VT 05620-2701

Emailed bids must consist of a single email with a single, digitally searchable PDF attachment containing all components of the bid. Multiple emails or multiple attachments will not be accepted. There is an attachment size limit of 40 MB. It is the Bidder's responsibility to compress the PDF file containing its bid if necessary to meet this size limitation.

Responses received shall be public records, available for public inspection, after a final contract for these services has been executed.

Point of Contact

All communications concerning this RFP are to be addressed in writing to Karen Hutchinson, Business Manager, via email (puc.businessmanager@vermont.gov). Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.

Statement of Rights

The State shall have the authority to evaluate Responses and select the Consultant as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP. The State reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Failure of a bidder to respond to a request for additional information or clarification could result in rejection of that bidder's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

Best and Final Offer (BAFO)

At any time after the submission of Responses and before the final selection of a Bidder for Contract negotiation or execution, the Commission may invite bidders to provide a BAFO. The Commission reserves the right to request BAFOs from only those bidders that meet the minimum

qualification requirements and have not been eliminated from consideration during the evaluation process.

Cost of Preparation

The bidder shall be solely responsible for all expenses incurred in the preparation of a response to this RFP and shall be responsible for all expenses associated with any presentations or demonstrations associated with this request or any proposals made.

STANDARD CONTRACT FOR SERVICES

1. Parties. This is a contract for services between the State of Vermont, _____ (hereinafter called "State"), and _____, with a principal place of business in _____, (hereinafter called "Contractor"). Contractor's form of business organization is _____. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter. The subject matter of this contract is services generally on the subject of _____. Detailed services to be provided by 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 \$_____.00.

4. Contract Term. The period of Contractor's performance shall begin on _____, 20__ and end on or before May 31, 2025, subject to completion of the Consultant's analyses. The Contract Term is subject to renewal with approval of the Commission and subject to Legislative funding and approval of the Clean Heat Standard.

5. Prior Approvals. This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. Amendment. No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor.

7. Termination for Convenience. This contract may be terminated by the State at any time by giving written notice at least 30 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. Primary Contacts. The Parties will keep and maintain current at all times a primary point of contact for this Agreement, which are presently as follows:

For the State of Vermont

For the Contractor

Name:

Name:

Title:

Title:

9. Professional Liability Insurance. In addition to the insurance requirements in Attachment C of this Contract, before commencing work on this Contract and throughout the term of this Contract, the Contractor agrees to procure and maintain Professional Liability Insurance for any and all services performed under this Contract, with minimum coverage of \$1,000,000 per claim, \$1,000,000 aggregate.

Before commencing work on this Contract, Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect. *See* Attachment D.

10. Work Product Ownership. Upon full payment by the State, all products of the Contractor's work, including outlines, reports, charts, sketches, drawings, artwork, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by Contractor.

11. Attachments. This contract consists of ___ pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – “Standard State Provisions for Contracts and Grants,” a preprinted form (revision date 12/15/2017)

Attachment D – Professional Liability Insurance

Additional attachments may be lettered as necessary.

12. Order of Precedence. Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

(1) Standard Contract

(3) Attachment C (Standard State Provisions for Contracts and Grants)

(4) Attachment A – Statement of Work

(5) Attachment B – Payment Provisions

(6) Attachment D – Professional Liability Insurance

(7) Additional attachments may be lettered and reordered as necessary.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont

By the Contractor

Date:

Date:

Signature:

Signature:

Name:

Name:

Title:

Title:

ATTACHMENT A – STATEMENT OF WORK

The primary responsibility of the Consultant will be to develop clean heat measure characterizations and relevant assumptions, including CO₂e lifecycle emissions analyses in accordance with 30 V.S.A. §§ 8128(c) and (d).⁶ The Consultant will bring expertise in lifecycle emissions analysis to assess the overall greenhouse gas (GHG) impacts of various heating technologies and fuels. The analyses will involve feedback from the Technical Advisory Group and are subject to review and approval of the Commission.

The Consultant will develop clean heat measure characterizations and assist the Commission and the Technical Advisory Group in establishing credit values for those measures. At a minimum, the Consultant will develop clean heat measure characterizations consistent with industry best practices for the eligible measures listed in 30 V.S.A. § 8127(d). This characterization will be used to develop clean heat credit values for these measures pursuant to 30 V.S.A. § 8127(c) with the assistance of the Technical Advisory Group and the Commission. The Consultant will be expected to present its findings to the Commission and the Technical Advisory Group, to discuss its methods and results, accept feedback from the Technical Advisory Group and members of the public, and incorporate amendments at the direction of the Commission. The Consultant will be expected to compile final clean heat measure characterizations and credit values into a publicly available Clean Heat Standard Technical Reference Manual. The Consultant will also be expected to be available to provide technical support regarding its work to the Commission, as needed, throughout the 2024 and 2025 Vermont legislative sessions. Bidders should leverage their technical expertise to recommend how the Commission could effectively incorporate their analyses throughout the Clean Heat Standard design process.

The core requirements for this work are described in Public Act No. 18, as codified in 30 V.S.A. §§ 8127(c) and (d):

(c) Credit values. Clean heat credits shall be based on the accurate and verifiable lifecycle CO₂e emission reductions in Vermont’s thermal sector that result from the delivery of eligible clean heat measures to existing or new end-use customer locations into or in Vermont.

(1) For clean heat measures that are installed, credits will be created for each year of the expected life of the installed measure. The annual value of the clean heat credits for installed measures in each year shall be equal to the lifecycle CO₂e emissions of the fuel use that is avoided in a given year

⁶ 30 V.S.A. §§ 8128(c) and (d) provide:

(c) The [Vermont Public Utility] Commission [the “Commission”] shall hire a third-party consultant responsible for developing clean heat measure characterizations and relevant assumptions, including CO₂e lifecycle emissions analyses. The [Technical Advisory Group or “TAG”] shall provide input and feedback on the consultant’s work. The Commission may use appropriated funds to hire the consultant.

(d) Emission analyses and associated assumptions developed by the consultant shall be reviewed and approved annually by the Commission. In reviewing the consultant's work, the Commission shall provide a public comment period on the work. The Commission may approve or adjust the consultant’s work as it deems necessary based on its review and the public comments received.

because of the installation of the measure, minus the lifecycle emissions of the fuel that is used instead in that year.

(2) For clean heat measures that are fuels, clean heat credits will be created only for the year the fuel is delivered to the end-use customer. The value of the clean heat credits for fuels shall be the lifecycle CO₂e emissions of the fuel use that is avoided, minus the lifecycle CO₂e emissions of the fuel that is used instead.

(d) List of eligible measures. Eligible clean heat measures delivered to or installed in residential, commercial, and industrial buildings in Vermont shall include:

- (1) thermal energy efficiency improvements and weatherization;
- (2) cold-climate air, ground source, and other heat pumps, including district, network, grid, microgrid, and building geothermal systems;
- (3) heat pump water heaters;
- (4) utility-controlled electric water heaters;
- (5) solar hot water systems;
- (6) electric appliances providing thermal end uses;
- (7) advanced wood heating;
- (8) noncombustion or renewable energy-based district heating services;
- (9) the supply of sustainably sourced biofuels;
- (10) the supply of green hydrogen;
- (11) the replacement of a manufactured home with a high efficiency manufactured home and weatherization or other efficiency or electrification measures in manufactured homes; and
- (12) line extensions that connect facilities with thermal loads to the grid.⁷

The Consultant must provide the Commission with electronic copies of all reports and work papers upon request, and any and all information collected under this contract shall be made available to the Commission and its authorized employees and contractors upon request of the Commission or its staff.

The Consultant's opinions on the work under this contract will not be binding on the Commission.

⁷ The full text of the law is available at:
<https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT018/ACT018%20As%20Enacted.pdf>.

Information Management

The Consultant and any support personnel with access to confidential information must sign a non-disclosure agreement provided by the Commission relative to the protection of confidential information, and the Consultant and staff must take reasonable steps to ensure the physical security of confidential information that they maintain.

If the Consultant receives a request to disclose confidential information from a person or organization other than the Commission or its authorized employees, the Consultant shall deny the request and inform the requester that such requests for the information may be filed at the Commission. The Commission will then determine whether the information should be disclosed.

The Consultant's work and analyses will not be binding on the Commission, and the Commission may approve or adjust the Consultant's work as the Commission deems necessary based on its review and feedback from both the Technical Advisory Group and the public,⁸ as the Commission is required by law to make its own final decisions regarding the design of the Clean Heat Standard.⁹

All information collected under this contract shall be made available to the Commission and its authorized employees and contractors upon request of the Commission or its staff.

Conflicts of Interest

The Consultant will not be permitted to engage in business activities that create a conflict of interest or appearance thereof with the performance of the work of this contract. Accordingly, the Consultant, its applicable employees, and its applicable subcontractor(s) will be required to promptly and fully inform the Commission of any business activities and/or relationships that a reasonable person, fully acquainted with the facts and circumstances, could reasonably conclude might unfairly disadvantage another party. The Consultant, its applicable employees, and its applicable subcontractor(s) will be expected to abide by the Commission's reasonable determination as to whether such activities or relationships fall within the terms of this Paragraph.

The Consultant will be required to affirm that neither it nor any of its applicable personnel or subcontractors has or presently expects to have any beneficial, contractual, or business relationship with the Vermont Department of Public Service, the Vermont Agency of Natural Resources, any Clean Heat Standard "obligated parties"¹⁰ or "default delivery agents,"¹¹ or any other entities over which the Commission has jurisdiction that could be directly affected by the Consultant's

⁸ 3 V.S.A. §§ 8128(c) and (d).

⁹ *E.g.*, § 8122(b) ("By rule or order, the Commission shall establish or adopt a system of tradeable clean heat credits earned from the delivery of clean heat measures that reduce greenhouse gas emissions.")

¹⁰ "'Obligated party' means: (a) a regulated natural gas utility serving customers in Vermont, or (b) for other heating fuels, the entity that imports heating fuel for ultimate consumption within the State, or the entity that produces, refines, manufactures, or compounds heating fuel within the State for ultimate consumption within the State. For the purpose of this section, the entity that imports heating fuel is the entity that has ownership title to the heating fuel at the time it is brought into Vermont." 3 V.S.A. § 8123(12).

¹¹ "'Default delivery agent' means an entity designated by the Commission to provide services that generate clean heat measures." 3 V.S.A. § 8123(7).

performance under the contract with the Commission. If the Consultant cannot make that affirmation, it must disclose and describe any such relationships in its response to this RFP. The Consultant must further affirm that it and its applicable personnel and subcontractors shall not develop, pursue, or engage in any such beneficial, contractual, or business relationships with the Vermont Department of Public Service, the Vermont Agency of Natural Resources, any Clean Heat Standard “obligated parties” or “default delivery agents,” or any other entities over which the Commission has jurisdiction throughout the term of any contract with the Commission pursuant to this RFP, and for six months thereafter, without the written permission of the Commission. During the term of the contract, the Consultant, its employees, and its subcontractors may not advocate before the Commission on behalf of any party or participant.

The Consultant will be expected to require its subcontractors to disclose to the Consultant, on an ongoing basis throughout the terms of their contracts with the Consultant, any contracts they intend to enter into with the Vermont Department of Public Service, the Vermont Agency of Natural Resources, any Clean Heat Standard “obligated parties” or “default delivery agents,” or any other entities over which the Commission has jurisdiction. The Consultant will be required to promptly provide a copy of all such disclosures to the Commission.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont

By the Contractor

Date:

Date:

Signature:

Signature:

Name:

Name:

Title:

Title:

ATTACHMENT B – PAYMENT PROVISIONS

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

1. Prior to commencement of work and release of any payments, the Consultant shall submit to the Vermont Public Utility Commission:
 - a) a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b) a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the Commission receives an error-free invoice with all necessary and complete supporting documentation.
3. The Consultant shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the Commission. All invoices must include the Contract Number for this contract.
4. The Consultant shall submit invoices to the Commission not more frequently than monthly.
 - a) Invoices shall be submitted to the Commission either:
 - o To Karen Hutchinson, Business Manager, via email at puc.businessmanager@vermont.gov
 - or**
 - o By hardcopy with one original signature to Holly R. Anderson, Clerk of the Vermont Public Utility Commission, 112 State Street, Montpelier, VT 05620-2701
 - b) The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows: _____

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont

By the Contractor

Date:

Date:

Signature:

Signature:

Name:

Name:

Title:

Title:

**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)

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS**

SIGNATURES

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont

By the Contractor

Date:

Date:

Signature:

Signature:

Name:

Name:

Title:

Title:

ATTACHMENT D – PROFESSIONAL LIABILITY INSURANCE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain Professional Liability Insurance for any and all services performed under this contract, with minimum coverage of \$1,000,000 per claim, \$1,000,000 aggregate.

Before commencing work on this Contract, Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont

By the Contractor

Date:

Date:

Signature:

Signature:

Name:

Name:

Title:

Title: