



Release Date: October 5, 2017

Application Due Date: 4:00 PM on Nov. 20, 2017

## **CLEAN WATER INITIATIVE PROGRAM SFY 2018 Clean Water Fund Partnership Grants Request for Proposals (RFP)**

### **Introduction and Purpose**

The Vermont Department of Environmental Conservation (DEC) is requesting proposals to implement programs that will support the expansion of water quality improvements through increased technical support and education.

This request for proposals is to support implementation across program priority areas including stormwater management, municipal road-related stormwater management, natural resource restoration, agriculture and forestry management. Eligible categories under this Partnership Grant are the following:

1. **Work crew assistance**: To increase on-the-ground implementation of priority clean water improvement projects using work crews. The applicant must describe the process for project identification using basin planning, targeted outreach and delivery of implementation assistance through the management of work crews;
2. **Technical capacity (i.e., "Train the Trainer") assistance**: To expand the technical capacity of targeted audiences (such as, but not limited to, municipal governments, nonprofit organizations or farmers) to increase local water quality-based stewardship through implementation of clean water improvement projects. Eligible applicants in this category include watershed groups, conservation districts, non-profits, and higher education. The applicant must describe how the proposal will enhance capacity of the identified targeted audience.

### **Scope of Work**

The successful applicant(s) will be responsible for the following tasks under each funding opportunity. The applicant should describe how they will accomplish each task in the proposal. For Technical Capacity category, the applicant must fully describe the training they intend to implement.

The applicant may request funds for either category or both.

### **Work crew supported project implementation (approximately \$215,000 is available):**

1. Collaborate with the local watershed coordinators and partners to identify and develop projects that can be implemented by a work crew and that are identified as priorities in basin planning, the basin planning database or through coordination with state basin planners. Clean water project types are limited to:
  - road projects,
  - riparian buffer restoration (including lakeshores) and
  - green stormwater infrastructure, infrastructure.

2. Implement projects, keeping track of costs and time involved for each project. All projects must meet 35' requirements for buffers, state permit requirements, and have an approved operations and maintenance agreement.
3. Manage and supervise work crews as part of project implementation.
4. Track and report on individual projects according to the [DEC tracking and accountability protocols](#).

**Technical Capacity Assistance (approximately \$100,000 is available)**

1. Conduct Technical Capacity Assistance using “train the trainer” workshops for audiences that may include but are not limited to watershed organizations, lake associations regional or local civic organizations or business groups. Training subjects include:
  - Green infrastructure
  - Stormwater practices
  - New Stormwater permits
  - Natural resource protection and restoration
 The program must increase the understanding of, and/or opportunity for implementation of water quality practices.
2. Document dates of trainings, number of attendees, education provided, and a narrative describing the expected value of the training.
3. Conduct a pre-and post-survey of the trainings. Survey process must be approved by DEC prior to implementation to allow for an evaluation of the training’s effectiveness.
4. Track and report on trainings through the DEC n-form [online outreach tracking process](#).

**Funding and Method of Payment**

Funding for this RFP is contingent on available funds. DEC anticipates \$315,000 in available funding. Funding cannot be used to support general education, political advocacy, fundraising, grant writing or litigation.

Payments will be made on a cost-reimbursable basis. Multiple invoices may be submitted prior to completion of individual deliverables.

**Project Timeline**

Award recipients are expected to complete all work by December 2018.

**Deadlines and Content of Proposals**

- Questions:** Questions are required to be submitted electronically via email to David Pasco at [david.pasco@vermont.gov](mailto:david.pasco@vermont.gov) by, **October 20, 2017, at 4:00 pm** using the subject line “Partner Grant RPF Questions.” Answers will be posted by **October 25, 2017** at 4:00 ET to the Vermont Bid System site under this RFP posting.
- Submittal:** All proposals must be submitted electronically via email to David Pasco, [david.pasco@vermont.gov](mailto:david.pasco@vermont.gov), by **November 20, 2017, 4:00 pm** using the subject line “Multi-Sector Clean Water Block Grant RFP.”
- Bid opening:** Proposals are anticipated to be opened **November 21, 2017, at 9:00 am**.
- Notification:** Proposal(s) preliminarily accepted by DEC are anticipated to be notified no later than **December 11, 2017**.

**All proposals must include the following information:**

- Summary of the proposed plan to address the requirements in the scope of work.  
**Work crew proposals** must include how the applicant intends to select projects, process for accessing materials as needed, and collaborations with municipalities and landowners for resources and match opportunities.  
**Technical Assistance proposals** must include the targeted audience and sector, demonstrated need for the training, community engagement, value of the training, and how it will help local partners implement high impact and cost-effective clean water improvement projects.
- Demonstration of the capacity to administer the project and examples of prior related work.
- List of qualifications of staff who will work under this grant award. For each person please include name, title and role.
- Past experience with successfully completing similar water quality projects in Vermont.
- Budget that includes the following:
  - Total cost of project including personnel costs (salary, fringe), mileage, materials and supplies and indirect.
  - Budget narrative that fully describes the budget detail.
- A statement identifying individuals who were involved in the preparation of the proposal as well as a single point of contact.
- Proof of insurance coverage in compliance with the limits outlined in State of Vermont’s Customary Grant Provisions, Attachment C.

**Selection Criteria**

Proposals must clearly address each of the selection criteria identified below. Selection will be based on the following criteria. Incomplete proposals will not be evaluated.

1. Plan for implementation of the proposal – 40%.
2. Capacity to administer the project including qualifications of the project team – 20%
3. Vermont Water Quality Project Experience – 20%
4. Project Costs – 20%

Applicants to this RFP should be aware that they will need to agree to the State of Vermont Customary Grant Provisions (Attachment C) in order to execute an agreement. These provisions, which include insurance requirements, are attached to this RFP for reference.

**Reservation of State’s Rights**

In issuance of this RFP, the State reserves the following rights:

- To accept or reject any and all proposals, in whole or in part, with or without cause in the best interest of the State;
- To waive technicalities in submissions (A technicality is a minor deviation from the requirements of an RFP that does not impact the substantive terms of the bid/RFP and can be considered without a material impact on the RFP process, etc.);
- To make purchases outside of the awards where it is deemed in the best interest of the State; and
- To obtain clarification or additional information.

**Confidentiality**

After conclusion of the grant process, proposals are a matter of public record. If an application includes material considered by the applicant to be proprietary and confidential under 1 V.S.A., Chapter 5, the

application shall clearly designate the material as such and explain why such material should be considered confidential. The Vendor must identify each page or section of the Proposal that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the applicant if the identified material were to be released.

Under no circumstances shall the entire Proposal be designated as proprietary or confidential. If the Vendor marks portions of the Proposal confidential, the Vendor shall provide a redacted version of the Proposal for release to the public. Notwithstanding the above, the Secretary has an independent obligation under Vermont law to determine whether any proposal material is subject to public inspection and copying upon request, which may include material that has otherwise been designated as proprietary and confidential by the Vendor. The Vendor's designation of material as proprietary and confidential, and submission of a redacted Proposal, are provided to the Secretary for informational purposes in the event the Agency receives a public records request and will not result in withholding of materials by the Secretary unless expressly supported by Vermont law.

#### **Attachments**

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- Attachment A: SFA – Standard Grant Agreement
- Attachment C: State Standard Provisions for Contracts and Grants

## ATTACHMENT A



Vermont Department of Environmental Conservation

*Agency of Natural Resources*

### SFA - STANDARD GRANT AGREEMENT

1. Parties: This is a Grant Agreement between the State of Vermont, Department of Environmental Conservation (hereinafter called “State”), and \_\_\_\_\_ with principal place of business at \_\_\_\_\_. (hereinafter called “Grantee”). It is the Grantee’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Grantee is required to have a Vermont Department of Taxes Business Account Number.
2. Subject Matter: The subject matter of this Grant Agreement is for services generally on the subject of \_\_\_\_\_. Detailed scope to be provided by the Grantee are described in Attachment A, Scope of Work to be Performed.
3. Maximum Amount: In consideration of the scope of work, the State agrees to pay Grantee, in accordance with the payment provisions specified in Attachment B, Payment Provisions, a sum not to exceed \$ \_\_\_\_\_. A detailed summary of the budget for this project can be found in Attachment B. This grant award cannot be used as match for the purpose of obtaining additional federal funds by the Grantee without written approval from the State.
4. Subcontracting: Grantee shall not assign labor duties to a subcontractor without the prior written approval from the State. Written approval is obtained by completing the Request for Approval to Subgrant/Subcontract form.
5. Procurement: The Grantee certifies that for any equipment, supplies, and/or services outside of their organization, that they have and will follow their procurement policy.
6. Ownership and Disposition of Equipment: Any equipment purchased or furnished to the Grantee by the State under this Grant Agreement is provided on a loan basis only and remains the property of the State. Grantee must submit a written request to retain the equipment at the end of grant term for the same use and intended purpose as outlined in this agreement. The written request should include: description of equipment, date of purchase, original cost and estimated current market value.
7. Source of Funds: State funds.
8. Grant Term: The period of Grantee’s performance shall begin upon date of execution, signified by the date of signature by the State and end on \_\_\_\_\_.
9. Amendment: No changes, modifications, or amendments in the terms and conditions of this Grant Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Grantee. No amendment will

considered without a detailed justification to support the amendment request. Failure to provide an adequate justification may result in the denial of the request. Any request for an amendment to this agreement must be made in writing at least thirty (30) days prior to the end date of this agreement or the request may be denied.

10. Cancellation: This Grant Agreement may be cancelled by either party by giving written notice at least            days in advance.

11. Fiscal Year: The Grantee's fiscal year starts            and ends            .

12. Work product ownership: Upon full payment by the State, all products of the Grantee's work, including outlines, reports, charts, sketches, drawings, art work, 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 Grantee.

13. Attachments: This Grant consists the following attachments that are incorporated herein:  
Attachment A - Scope of Work to be Performed  
Attachment B – Budget and Payment Provisions  
Attachment C - Customary State Grant Provisions  
Attachment D – Other Grant Provision(s) if necessary  
Request for Approval to Subgrant/Subcontract

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED JULY 1, 2016**

- 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 the 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. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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 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 or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

- 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 the 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 the Contract, 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. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. 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.

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 the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, 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 the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR 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.

**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 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.

**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 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.

**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 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 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**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. 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.

**24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**25. 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.

- 26. 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.
- 27. 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.
- 28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:
- 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. No Implied Waiver of Remedies:** A 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.
- 29. 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.
- 30. 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.

- 31. 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.
- 32. 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 continental United States, except with the express written permission of the State.

(End of Standard Provisions)