



Division of Efficiency and Energy Resources  
Request for Proposals

Market Characterization and Assessment Study

Residential Sector:  
For New Construction and Existing Homes

Date Issued: 1/10/2020

Response Due By: 2/20/2020

## **Overview**

The Vermont Public Service Department (Department or PSD) is responsible for evaluating energy efficiency programs implemented by Vermont's Energy Efficiency Utilities (EEUs). The purpose of this Request for Proposals (RFP) is to select a Consultant, or team of Consultants, to characterize Vermont's current existing home and new construction residential markets by documenting current appliance, HVAC, building shell characteristics, heating and domestic hot water systems, and lighting; as well as assess adherence to Vermont's Residential Building Energy Standards (RBES) in the new construction market. This project will include a survey and on-site assessment of *existing residential* homes in Vermont and also a *residential new construction* baseline study. The consultant will also be responsible for comparing current results to previous Vermont market characterizations and describing trends over time, as well as identifying areas of opportunity for further energy efficiency improvement in Vermont's residential sector.

Consultants must have extensive experience and demonstrated abilities in all aspects of energy efficiency evaluation techniques, strategies, and principles, including: study design; phone survey design; on-site data gathering in residential facilities; data analysis; statistical sampling design to address reliability, variance, and bias; and report writing.

Proposals are due by 4:00 2/20/2020 with the goal of selecting a Consultant by 3/06/2020. The contract will start as soon as practicable following the award and execution of a contract, which can take up to six weeks, so timelines should reflect a project start date of 4/17/2020. Proposals must not exceed \$740,000.

Questions about the RFP should be submitted in writing no later than 1/24/2020. Responses to questions will be posted on the PSD website by 1/29/2020. Three original hard copies and one electronic copy (electronic copy may be delivered via email) must be delivered to Barry Murphy at the Vermont Department of Public Service. Both electronic and hard copies must arrive before the deadline. Proposals and questions should be addressed to:

Barry Murphy  
Energy Programs Specialist  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620-2601  
Phone: (802) 828-3183  
Email: [barry.murphy@vermont.gov](mailto:barry.murphy@vermont.gov)

<b>Date of Issue of the RFP</b>	1/10/2020
<b>Last day for Submitting Questions</b>	1/24/2020
<b>PSD Response to Vendor Questions</b>	1/29/2020
<b>Proposal Due Date</b>	2/20/2020

## **Introduction**

The Vermont Public Service Department is seeking an experienced energy efficiency program evaluation Consultant to provide residential sector (new construction and existing buildings) market characterization and baseline studies related to the evaluation of Vermont EEU programs.

The Department conducts its evaluation efforts in cooperation with the EEUs<sup>1</sup>: Efficiency Vermont (EVT) operated by Vermont Energy Investment Corporation (VEIC); Burlington Electric Department (BED), who delivers the EEU service to electric ratepayers in the City of Burlington; and Vermont Gas Systems (VGS), who delivers natural-gas efficiency services in their territory.

The Department conducts market characterization studies on a three-year cycle; the last residential study was started in late 2015. The most recent market studies for both the residential and commercial sector can be found here:

<https://publicservice.vermont.gov/content/evaluations-and-studies>. Respondents are encouraged to review the most recent study and the other materials at this site to familiarize themselves with the scope and methodology of the Department's past energy efficiency market assessment efforts.

In addition, general information about energy efficiency programs in Vermont is available at:

- Efficiency Vermont, [www.encyvermont.org](http://www.encyvermont.org)
- Burlington Electric Department, [www.burlingtonelectric.com](http://www.burlingtonelectric.com)
- Vermont Gas Systems, <http://vermontgas.com>
- Vermont Public Utilities Commission, <https://puc.vermont.gov/>

## **Scope of Work**

The primary purpose of this study is to document current baseline data for existing homes and new construction in the residential sector. The study will document the existing saturation and efficiency levels of features such as appliances, building shell characteristics, HVAC, heating and domestic hot water systems (including age and fuel types), lighting and adherence to Residential Building Energy Standards for new construction (RBES). Respondents are expected to propose a mix of phone surveys and on-site verification techniques as the data collection method. Proposals should address an overall approach and identify what market actors will be interviewed including but not limited to industry insiders and outsiders, energy efficiency program participants and non-participants, wholesale distributors, and trade allies. Proposals should also address market actor awareness and opinions of the EEUs services, and recommendations for improvement.

Surveys and on-site assessments will not need to include comprehensive energy audit type

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<sup>1</sup> As defined in Appendix A of the Public Service Board's Process and Administration of an Order of Appointment for EEU's and further referenced in the Order's Section II,2,G (a) appointed EEU's shall participate in ongoing evaluation and planning activities to support their long-range resource planning responsibilities. (The full Order of Appointment document is available upon request.)

building measurements and detailed modeling of specific site energy use. Rather, data collection efforts will gather information on current physical building and equipment characteristics (all homes that have not participated in an EEU new construction program in the sample shall have blower door tests unless one has already been carried out and the results are available) and efficiencies and opportunities for improvement, plus gather qualitative data on customer perceptions and receptiveness of energy efficiency as a practice as well as the quality of service provided by the EEU's. The on-site assessments are not detailed quantitative energy audits, however, bidder proposals should include a simple summary report of findings for home owners to use as a future resource for improving efficiency if they so choose, this report would outline current conditions, indicate where improvements could be achieved, and direct the homeowner to discuss the findings with the relevant EEU.

The hired Consultant will use this information to characterize the current residential existing homes and new construction markets in Vermont. Studies will propose methodologies that characterize the following territories: (1) statewide (2) EVT's service territory (3) BED's service territory and (4) VGS service territory.

EEU territories vary in size and nature plus territories overlap to various degrees. Proposals should outline a statistical sampling design able to answer multiple research questions with a single coordinated approach (include sample sizes and justify oversampling in territories as needed). Statistical confidence of findings should be proposed for the individual EEU territories and for the entire study. The PSD is looking for the strongest and most reliable approach for accomplishing the goals of the research while keeping the study within the budget.

*Task 1 - Study of Residential New Construction and Major Renovation Projects for Single and Multi-Family Dwellings*

- A. The selected Consultant will include phone surveys and on-site visits to document building, appliances and equipment "as-built" status and characterize current energy efficiency levels being achieved in these markets including, but not limited to: Determine HVAC equipment baseline including: size, type, fuel type, and associated efficiency characteristics of all HVAC equipment, including balanced ventilation systems, whole building ventilation controls, heating and cooling, water heating, air and ground source heat pump saturations, and use of wood for fuel. Also include thermostat types (smart, programmable and manual), customer thermostat usage practices, and Home Energy Management Systems. For heat pumps, survey homeowners about how the unit is being operated and if window unit air conditioning was present prior to installation. Finally, record pertinent information about any on-site use of renewable energy for the home (e.g., solar or wind) as well as Electric Vehicle Supply Equipment (EVSE) and storage batteries etc.
- B. Residential building shell characteristics: Respondents should propose a method for assessing building shell characteristics in addition to the required blower door tests (methods could include visual inspection of insulation levels and others). Respondents should also propose a method for determining adherence to the Vermont Residential Building Energy Standards (RBES). The proposed method should focus on technical compliance levels and be comparable to the method used in the most recent Vermont

residential market assessment<sup>2</sup>. (Sampling should include enough buildings to establish both single family and multi-family compliance.) Presence of a RBES certificate should be noted during data collection.

- C. Determine major appliance saturation baselines including: presence, number, size, type, fuel and efficiency characteristics (e.g., ENERGY STAR<sup>®</sup> or not) of all major household appliances. Gather age information for major appliances including refrigerators and freezers. Also survey for home consumer electronics such as TVs, Audio Video Equipment, PCs, Set Top Boxes and DVRs, Game Consoles, etc.
- D. Record all baseline lighting technology present and installed fixture/bulb quantity (including socket saturations for inefficient lighting (e.g. incandescent) as well as efficient lighting such as CFLs and LEDs), and any occupancy sensors and lighting control characteristics.
- E. Determine the characteristics of the renovation market (including gut rehabilitation and major additions) such as: practices regarding building shell efficiency, adherence to energy codes, associated appliance change-out, the degree which home owners are working with EEU's when renovating and how energy efficiency might be better incorporated into the market.

Task 1 should take into account that the PSD expects the contractor will utilize approaches that will make it easy and practical to compare the new data with the data gathered through the PSD's past survey and interview instruments for prior market characterization studies in Vermont. This could include the use of parts or all of previous survey instruments. (These instruments can be made available on request.) Task 1 should also include the development and delivery of a simple summary report of findings to building owners after on-site visits. (Note, the Department has a suitable template.)

### Task 2 - Study of Existing Residential Single and Multi-Family Dwellings

The selected Consultant will include phone surveys and on-site visits to document building and equipment "as-is" status and characterize current energy efficiency levels being achieved in these markets including but not limited to:

- A. Determine HVAC equipment baseline, including size, type, age, fuel type and associated efficiency characteristics of all HVAC equipment, including heating and cooling, hot water heating, air and ground source heat pump saturations, and use of wood for fuel. Also include thermostat types (smart, programmable, manual and integrated controls) and customer thermostat usage practices. For heat pumps, survey homeowners about how the unit is being operated and if window unit air conditioning was present prior to installation. Record the presence of EVSE (Electric Vehicle Supply Equipment) and typical usage data if available. Finally, record pertinent information about any on-site use of renewable energy for the home (e.g., solar or wind).
- B. Assess building shell characteristics -methods should include one or more of the following: blower door tests, visual inspection of insulation levels etc. Levels of relative humidity within the home should be recorded and dated, and if

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<sup>2</sup> RBES section 3, page 11.

<https://publicservice.vermont.gov/sites/dps/files/documents/VT%20SFNC%20Overall%20Report.pdf>

bathroom/kitchen exhaust fans exhaust ventilation to the exterior.

- C. Determine major appliance saturation baselines including: presence, number, size, age and efficiency characteristics (e.g., Energy Star or not) of all major household appliances. Where applicable, note the condition, and, as feasible, relative appliance efficiency levels and opportunities for appliance recycling (e.g., second refrigerators, freezers, room air conditioners), or good opportunities for early replacement. Also survey for home consumer electronics such as TVs, set top boxes, game consoles, computers and controlled power strips.
- D. Record all baseline lighting technology present and installed fixture/ bulb quantity (including socket saturations for inefficient lighting (e.g. incandescent) as well as efficient lighting such as CFLs and LEDs) and any occupancy sensors and lighting control characteristics. Efficient lighting should be broken out by type and socket vs fixture.
- E. For a representative sample of homes which are site-visited that use deliverable fuels (e.g., oil or propane), natural gas and electricity(heat pump, heat pump with supplement resistance baseboard and resistance baseboard) for space heat, obtain at least one year's worth of fuel/energy usage data and use that information to estimate home heating loads (in units of fuel and MMBtu/sq.ft.) as well as total energy intensity.

Task 2 should take into account that the PSD expects the contractor will utilize approaches that will make it easy and practical to compare the new data with the data gathered through the PSD's past survey and interview instruments for prior market characterization studies in Vermont. This could include the use of parts or all of previous survey instruments. Task 2 should also take into account the development and delivery of a simple summary report of findings to provide to building owners after on-site visits.

**Note:** if sampling for Task 1 and 2 includes multi-family buildings more than three stories in height then the Business Sector Consultant will be asked to collect data for those buildings and provide it to the PSD for use in the Residential Sector study. Co-ordination between contractors during the sampling phase is required.

### Task 3 – RBES Awareness, EEU Service Quality and Process Insights

The Contractor should use interviews and on-site data collection to gather data on awareness of, attitudes toward, and prior experience with RBES, as well as EEU programs and services by program participants and non-participants. Analysis of service quality and process insights should consider reasons for participation and non-participation in efficiency programs; including but not limited to participation motivation, barriers to participation and factors influencing decision making related to using or not using EEU services as well as attitudes, perceptions, energy efficiency literacy and general awareness related to efficiency and EEU services.

Consultants should identify how EEU services could be modified to increase participation, improve operations and augment program design based on insights gleaned from characterizing the market. A discussion of these and other relevant qualitative observations should be made by the Consultant throughout the study.

#### Task 4 Market Actor Insights

Proposals should address an overall approach for surveying market actors. Areas of interest include retailer, installer, and homeowner insights related to the following: circulator pumps, cold climate heat pumps, and heat pump water heaters. Also, homeowner and retailer insights regarding whether home energy management systems are performing as expected. Proposals should also address market actor awareness and opinions of the EEU services, and recommendations for improvement.

#### Task 5 - Characterization of EEU Jurisdictions and the State as a whole

The consultant should propose a method for characterizing the state as whole and for each EEU jurisdiction. In addition to the overall statewide baseline, proposals should address the method and sample sizes for characterizing buildings and equipment in both new construction and existing residential buildings in each of the EEU jurisdictions (EVT, BED, and VGS). Proposals should include anticipated statistical confidence and precision levels of samples.

#### Task 6: Comparison of the results of this market characterization to prior Vermont residential market characterizations

The consultant should review the past residential market assessments posted on the Department's website and propose an analysis for comparing of the results of this market characterization to the prior market characterizations. The objective of this task is to characterize how the Vermont residential markets (existing buildings and new construction) have changed over time. Prior residential market assessments include the following.

- 2016 Residential Market Assessments
  - New Construction On-site Report with RBES Compliance  
<https://publicservice.vermont.gov/sites/dps/files/documents/VT%20SFNC%20Overall%20Report.pdf>
  - Existing Buildings On-site Report  
<https://publicservice.vermont.gov/sites/dps/files/documents/VT%20SF%20Existing%20Homes%20Overall%20Report%20-%20FINAL%20022719.pdf>
  - Multi-Family On-site Report  
<https://publicservice.vermont.gov/sites/dps/files/documents/Vermont%20MF%20Onsite%20Report%20-%20FINAL%2009.06.18.pdf>

Pre-2016 market assessments are available upon request

#### Task 7: Identify areas of opportunity for improving energy efficiency in the residential sector in Vermont, including both existing housing as well as new construction.

Drawing upon all the results of the study as well as the contractor's experience and knowledge, identify any promising opportunities for improving the energy efficiency in existing homes, new construction, or major rehab/space addition market, which might be targeted by EEU programs and/or state policies in Vermont.

### **General Requirements**

The Consultant hired must meet the following General Requirements:

1. Consultant(s) must have extensive experience and demonstrated abilities in all relevant aspects of energy efficiency evaluation techniques, strategies, and principles, including study design, on-site data gathering in residential and/or commercial buildings, data analysis, statistical sampling design to address reliability, variance, and bias; and report writing. Consultants should possess a good knowledge of energy efficiency program design, implementation, monitoring, verification, and evaluation.
2. Consultant(s) must be fully conversant with current energy efficiency information technology systems, DSM tracking systems, and applications.
3. Consultant(s) must not be currently employed by a partner firm in Efficiency Vermont, by EVT itself, by the Burlington Electric Department or Vermont Gas Systems, and must agree not to undertake such employment during the term of this contract without explicit approval from the Department of Public Service.
4. Consultant(s) must be available to begin work immediately after the contract is awarded and commit to work completion as quickly as possible.
5. Due to the field sampling required for this study consultants should have the ability to be present in Vermont and available to meet in person on short notice.
6. A lead Consulting firm and lead contact person must be identified in joint proposals.

## **Project Management**

Management responsibilities include regular updates with the PSD project manager. The selected Consultant shall assign one project manager that will be the lead in terms of communication with the PSD. Management responsibilities include regular, every two weeks (at a minimum) updates with the PSD project manager via conference call, in which Consultant will provide a project progress review.

In addition, the Consultant shall prepare a monthly written report indicating the evaluation progress over the prior month, the planned activities for the next month, any issues that need to be addressed with suggested in-budget resolutions. These reports must be filed with the PSD manager by the 10<sup>th</sup> day of the month.

In addition, the Consultant should plan and budget for facilitating sufficient collaboration between the PSD and EEU's. The PSD is interested in including the EEU's input and perspective when appropriate. For example, the PSD will invite the EEU's to provide comments on draft evaluation instruments throughout the study including but not limited to survey design and sampling methodologies. Part of the Consultant's role will be to efficiently synthesize collaborative input.

## **Budget**

Proposed total budget up to \$740,000 will be considered for the complete evaluation described in this RFP. Respondents should clearly outline the budget for the project. The budget should be broken out by task and sub-task as well as indicate the total project budget. Hourly rates should be clearly identified for all project staff and should remain the same for the duration of the contract.

The most reliable approach for accomplishing the goals of the research are desired while keeping the study within the budget.

Any cost savings associated with a contractor's proposal to conduct both the Commercial and Residential Market Assessments should be clearly identified.

## **Terms And Conditions**

1. Respondents must provide an hourly rate for various personnel to be assigned to each task identified in the proposal. While actual hours by task cannot be known with precision in advance, a best estimate should be provided with the proposal. A "not to exceed" budget figure will be established in the Terms and Conditions of the contract with the successful bidder.
2. Ownership of all work products will rest with the Department.
3. Any work products will be delivered to the Department upon termination of the project.
4. Contractors(s) must agree to enter a confidentiality agreement to protect certain customer specific information from public disclosure, as necessary.
5. The PSD reserves the right to amend or cancel this RFP at any time if the best interest of the State requires such action.
6. The PSD reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received and to accept any portion of a proposal if deemed in the best interest of the State.
7. The PSD reserves the right to accept or reject any and all bids, in whole or in part, with or without cause in the best interest of the State and to obtain clarification or additional information.
8. The PSD reserves the right to make purchases outside of the awarded Contracts where it is deemed in the best interest of the State.
9. News releases pertaining to this RFP, contract award, or the Project shall NOT be made without prior written approval from the PSD.
10. Selection of the winning bidder will be made based on the sole opinion of the PSD that the proposal submitted will be the most advantageous for the State.
11. The PSD reserves the right to make a selection without further discussion of proposals received. Therefore, it is important that each proposal be submitted in the most complete and accurate manner possible.
12. The PSD reserves the right to cancel any contract resulting from this RFP, for cause, as will be defined in the Terms and Conditions of the final contract.
13. Contractor agrees to the terms and conditions of Attachment C and D, which outline the Standard State Provisions for Contracts and Grants. Any requested deviations from these Attachments must be presented in the response to this RFP. The PSD and the State reserve the right to deny any such request.

The PSD assumes no liability in any fashion with respect to this RFP or any matters related thereto. All prospective service providers and their assigns or successors, by their participation in the RFP process, shall indemnify, save and hold the PSD and its employees and agents free and harmless from all suits, causes of action, debts, rights, judgments, claims, demands, accounts, damages, costs, losses and expenses of whatsoever kind in law or equity, known and unknown, foreseen and

unforeseen, arising from or out of this RFP and/or any subsequent acts related thereto, including but not limited to the recommendation of a service provider and any action brought by an unsuccessful prospective service provider.

It is imperative that Contractor(s) reveal any connections they or any sub-contractors have to projects included for verification. In general Contractors will not provide analysis for projects on which they are or were involved in developing engineering analysis related to project savings estimates.

As data handled by the selected Contractor(s) is potentially sensitive in nature, the Contractor will need to sign and abide by a confidentiality agreement provided by the PSD.

**Bidder Confidentiality and Access to Public Records:** All responses and other information disclosed in connection with an RFP become the property of the State and, once the resulting Contract is finalized, may be subject to disclosure under the State's Access to Public Records Law, [1 V.S.A. § 315](#) et seq. As a result of this the bidder must identify any material included in the response that is considered by the bidder to be proprietary or otherwise exempt from public disclosure in the event of a Public Records request, pursuant to [1 V.S.A. § 317\(c\)](#). The bidder's response must include a written explanation for each marked section that would support a reasonable claim of exemption, such as, for example, a description of the proprietary nature of the information and the harm that would occur should the material be disclosed. Additionally, the bidder must include a redacted copy of its response. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response or price information be marked confidential.

### **Databases from Project**

All survey and interview data collected in this project shall be entered into an electronic database(s) and provided to PSD to support additional analysis and future evaluations. Data shall be submitted to the PSD in a mutually acceptable, commonly usable electronic format, along with a documented data dictionary describing the database contents. Proposals should discuss the suggested database to be used and the data quality procedures planned.

It is required that all information and data collected under this project shall be provided to PSD upon request with the goals of supporting additional analysis and comments by staff. Quality control procedures shall be applied to ensure that data is organized and submitted in a mutually acceptable, commonly usable electronic format. A transfer of all data shall occur upon termination of the contact, although any and all data and information must be provided to the Department upon request at any point during the project period.

### **Selection Criteria**

The contractor selection process will be carried out by a proposal review team comprised of Department staff and other stakeholders as deemed appropriate by the PSD. The Team will follow all appropriate procedures and requirements as required under the State of Vermont's acquisition process. Once a proposal has been selected, PSD will immediately notify Respondents of their

status. A successful contractor or contractor team must be available to begin work immediately following receipt of the award.

The Department's Proposal Review Team will score and review all proposals according to the following Selection Criterion:

1. Experience and demonstrated capabilities in energy efficiency evaluation, impact and process evaluation of behavioral programs, strategies, and principles, including design, and data analysis.
2. Experience of the key staff successfully completing similar projects, and the firm's ability to provide timely and in-budget results.
3. Ability to commit key staff for the duration of the project and complete the requested scope of work within the scheduled timeframe.
4. Experience of key personnel, as well as the proposed staffing plan.
5. Price and value.
6. Writing skills and abilities, including a demonstrated proficiency in conveying complex topics in clear and concise language (demonstrated through writing samples of key staff and overall quality of proposal).
7. Quality and completeness of the proposal (in terms of responsiveness to this Request for Proposal, organization, graphics, grammar, spelling, etc). The clarity and organizational aspects of the proposal will be considered an indication of those qualities in future deliverables from the contractor.
8. To a lesser extent, physical proximity or availability to be in Vermont on short notice.

The Department may follow up with a round of questions to all or some of the applicants based upon the information contained in the proposals. A phone interview may also be scheduled for additional clarification of information contained within the proposals and the follow up responses.

### **The Proposal Submission**

Proposals may include one or more contractors but should identify a primary lead contractor.

The proposal should present a clear understanding of the issues to be addressed and a description of how the contractor proposed approach accomplishes the evaluation goals. The proposal should be structured to provide the following information:

1. Understanding of the scope of work and associated issues
2. Overview of the proposed approach
3. Detailed Work Plan and related task descriptions
4. Descriptions of similar projects
5. Qualifications of firm(s)
6. Qualification of individuals
7. Management and staff structure

8. References (at least 2)
9. Timeline
10. Task and total project budget that includes a listing of all staff assigned to the project and their time allocations and billing rates
11. Appendix A: Sample report from prime contractor
12. Appendix B: Other attachments as appropriate

**Understanding of the research goals and associated issues:** This section should provide a discussion of the key issues associated with achieving the scope of work. The section will allow the PSD to assess the contractor's understanding of the objectives that need to be addressed.

**Overview of the proposed approach:** This section should present an overview of the contractor's research overall approach/methodology, allowing the PSD to determine whether proposed methods are appropriate to the objectives in question.

**Detailed Work Plan and related task descriptions:** This section should include a, a detailed work plan with description of individual task/activities, a data management strategy (as necessary), and a staffing plan. This section should be descriptive enough to aid the PSD in understanding how the research will be conducted. This section should describe quality assurance measures that will be put in place to make certain that services will be delivered in an effective, efficient, timely, and competent manner. This section should also address any specific analytic approaches and related reporting activities.

**Descriptions of similar projects conducted:** This section provides a brief presentation of similar types of research conducted by the prime contractor and other key members of the research team. The discussion should allow PSD to assess the experiences of the contractor or the contractor team relative to the goals of this project.

**Qualifications of firm(s):** This section is provided to allow the contractor to present their corporate qualifications that are in addition to the above descriptions.

**Qualification of individuals:** The proposal should describe the individuals to be assigned to the tasks and their qualifications, along with experience of the key staff in successfully completing similar projects, and the firm's ability to provide timely and in-budget results.

**Management and staff structure:** The proposals should clearly define the team's management and operational structure. Additionally, address the ability to commit key staff for the duration of the project and complete the requested scope of work within the scheduled timeframe.

**References:** The contractor should provide at least two references of similar work for other clients. The references should include a brief description of the research effort including the name, address, telephone number and e-mail address of the client's representative for the referenced project.

**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.

**ATTACHMENT D**  
**Other Provisions**

1. **Work Product Ownership.** Upon full payment by the State, all products of the Contractor'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 Contractor.
2. **Prior Approval/Review of Releases.** Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by the Contractor under this contract shall be approved by the State prior to release.
3. **Ownership of Equipment.** Any equipment purchased or furnished by the State to Contractor under this contract is provided on a loan basis only and remains the property of the State.
4. **Confidential Information.** Contractor agrees to keep confidential all information produced or acquired by Contractor in connection with this Contract. Contractor will take reasonable measures as are necessary to restrict access to this information to employees or agents who must have the information on a "need to know" basis. The Contractor shall promptly notify the State of any third-party request for this information so that the State may act to protect its confidentiality.