

**Clean Water Initiative Program (CWIP)
2022 Dam Removal Design and Implementation
Block Grant**

Release Date: February 11, 2022
Proposals Due: March 7, 2022 (by 4:00 pm) EST

Contact for Proposals: Jean Nicolai, Jean.nicolai@vermont.gov
Department of Environmental Conservation (DEC), (802)585-4888

THE STATE WILL MAKE NO ATTEMPT TO CONTACT VENDORS WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH VENDOR TO PERIODICALLY CHECK <http://www.vermontbidsystem.com> FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THE RFP.

Project Timeline and Deadlines

Questions: All questions must be submitted electronically via email to Jean Nicolai at jean.nicolai@vermont.gov by **February 22, 2022, 12:00 pm (noon) EST** using the subject line “*Dam Removal DIBG - RFP Questions.*” Responses to questions will be posted to the Vermont Bid Registry on/before **February 25, 2022 by 4:00 pm.**

Submittal: All proposals must be submitted electronically via email to Jean Nicolai at jean.nicolai@vermont.gov by **March 7, 2022, 4:00 pm EST** using the subject line “*Dam Removal DIBG - Proposal.*”

Bid opening: Proposals are anticipated to be opened **March 8, 2022, by 4:00 pm EST.**

Notification: Proposal(s) preliminarily accepted by the State are anticipated to be notified no later than the week of **March 21, 2022.**

Agreement period: The State seeks to execute agreement(s) on/around **April 30, 2022** and expects work to be completed under this agreement by **November 30, 2024.** The agreement may be renewed up two additional one-year periods.

Introduction

The Vermont Department of Environmental Conservation (DEC) Clean Water Initiative Program (CWIP) is pleased to announce this Request for Proposals (RFP) for the 2022 Dam Removal Design and Implementation Block Grant initiative. This agreement is supported by the state Clean Water Fund (CWF). The goal of the CWF is to support projects that reduce sediment and nutrient pollution, including phosphorus, from runoff and soil erosion that discharge into the state’s rivers, streams, lakes, ponds, and wetlands.

The DEC CWIP is requesting proposals to manage a competitive Dam Removal Design and Implementation Block Grant program. Selected grantee(s) (“block grantee(s)”) will solicit proposals to subgrant funding to project implementers and then oversee these sub-agreements. Block grantee(s) will develop their own process for soliciting and reviewing proposed dam removal design and implementation

projects following selection guidance to be provided by CWIP. DEC expects to award one (1) agreement under this RFP.

Up to \$597,193 in the State Fiscal Year 2022 clean water budget is available for the initial award to support this block grant program and the associated dam removal design and implementation projects, additional funds may become available for this project during the period of performance of this award and could be added via an agreement amendment process.

Eligible dam removal design and implementation project types are those defined in Appendix B of the [CWIP State Fiscal Year 2021 Funding Policy \(https://dec.vermont.gov/sites/dec/files/wsm/erp/docs/2021-02-04_FINAL_FY21_CWIPFundingPolicy_signed.pdf\)](https://dec.vermont.gov/sites/dec/files/wsm/erp/docs/2021-02-04_FINAL_FY21_CWIPFundingPolicy_signed.pdf). Dam removal identification work is not eligible for funding under the resulting agreement from this RFP.

Scope of Work

The Grantee will oversee a Block Grant Program to accelerate statewide design and implementation of selected priority water quality Dam Removal projects from the DEC Watershed Projects Database to achieve measurable improvements to Vermont's water quality. Block grantee(s) will be responsible for:

- Designing a Dam Removal Design and Implementation initiative.
- Soliciting competitive proposals for their Dam Removal Design and Implementation initiative.
- Applying CWIP guidance and coordinating with DEC technical staff (Rivers Program) in prioritizing and selecting dam removal design and implementation projects for funding.
- Overseeing sub-grant work, ensuring sub-grantee awareness of and compliance with applicable local, state, and federal permitting requirements, and compiling and submitting deliverables and invoices to DEC.
- Ensuring geographically equitable distribution of funding.
- Maintaining consistent communication with DEC Technical Project Manager and other technical staff on project progress.
- (Optional) Providing technical expertise and project-level assistance to sub-grantees as needed either through in-house capacity or through sub-contracted/on-retainer services.

Block grantee(s) may directly implement Dam Removal Design and Implementation projects with funds encumbered through their block grant agreement(s) as long as their block grant initiative allows for fair competition and access to project funds for all interested sub-grantees and the project prioritization and selection process avoids conflicts of interest. Applicants interested in serving this dual role must indicate in their proposal 1) sufficient capacity to perform block grantee duties independent from direct project implementation, and 2) how the applicant's proposed block grant initiative will preserve fair competition and avoid conflicts of interest in project selection.

Expected Performance Measures, Milestones and Deliverables

The performance measures for this block grant will be the cumulative sum of all the sub-grantee achievements and will be organized as follows:

- Number of preliminary (30%) designs completed
- Number of final (100%) designs completed
- Acres of floodplain restored
- Linear feet of stream restored, and
- Stream miles reconnected for stream equilibrium /aquatic organism passage

Block grantees are expected to meet the milestones and deliverables (M&D) outlined in the M&D table on page 4 and 5 of this RFP. Sub-grantees must be instructed to provide the standardized M&D associated with their project type (Dam Removal – Preliminary Engineering Design; Dam Removal – Final Engineering Design; and/or Dam Removal – Implementation). The current M&D associated with these project types can be found in Appendix C of the CWIP State Fiscal Year 2021 Funding Policy

https://dec.vermont.gov/sites/dec/files/wsm/erp/docs/2021-02-04_FINAL_FY21_CWIPFundingPolicy_signed.pdf).

All deliverables will be made publicly available on the Watershed Projects Database after future database developments are implemented in the next calendar year.

Eligibility Requirements

Eligible applicants in response to this RFP include any listed eligible recipient entity on page 17 of the CWIP State Fiscal Year 2021 Funding Policy (https://dec.vermont.gov/sites/dec/files/wsm/erp/docs/2021-02-04_FINAL_FY21_CWIPFundingPolicy_signed.pdf). Respondents to this RFP should be aware that they will need to agree to the State of Vermont Customary Contract Provisions (Attachment C) in order to execute an agreement for this project. These provisions, which include insurance requirements, are attached to this RFP for reference (Attachment C). A current Vermont state employee responding to this RFP as a sole proprietor or owner of other form of business must obtain a waiver from the Vermont Department of Human Resources prior to entering into any contract with the State.

Procurement

Awardee(s) must maintain written procedures for procurement transactions. Any equipment, supplies, and/or services procured outside of an awardee's organization will need to be obtained per the awardee's procurement or purchasing policy.

Funding and Method of Payment

The agreement(s) resulting from this RFP is supported by the state Clean Water Fund (CWF) under the Clean Water Initiative Program (CWIP) State Fiscal Year 2022 Dam Removal Design and Implementation Block Grant initiative. Funding for the RFP is contingent upon availability. All payments will be made after satisfactory completion of each deliverable as outlined in an agreement(s) between the State and the awardee(s). The State anticipates up to \$597,193 to be available for this project in total. Final funding level or amount will be a function of the nature and quality of the responses received.

Content of Proposals

Proposals must clearly address each of the scoring criteria identified in this RFP (see scoring criteria section below). In addition, all proposals must include the following information:

1. Organization and Team Information
 - a. The name, title, email address, phone number, and associated organization of the individual who will lead the work.
 - b. A list of other staff who will be part of the project team if relevant.
 - c. The name, title, email address, and phone number of the authorized signatory.
 - d. The address and type of organization submitting the proposal (e.g., Municipality, Non-profit, Corporation, Sole Proprietor, LLC).
2. Estimated values for the performance measures and a brief summary of how these estimates were developed. Specific projects do not need to be proposed in response to this RFP.
3. A completed Milestones and Deliverables table with target dates entered (see page 4 and 5 below). Note this may be further refined in the resulting agreement.
4. A brief description of the applicant's relevant experience with managing a Block Grant-type agreement.
5. A brief description of the applicant's relevant experience/knowledge with dam removals, the Vermont Dam Safety Program requirements, wetland and floodplain restoration, water quality issues, and aquatic organism passage and aquatic and terrestrial habitat restoration including a brief summary of project staff qualifications and experience. Resumes may be attached as an optional supplement.

6. A brief narrative of how applicant proposes to implement the outlined scope of work and meet expected deliverables, specifically:
 - a. How the applicant will ensure fair competition and avoid conflicts of interest in project solicitation, prioritization, and selection.
 - b. If applicant does not have dam removal expertise in-house, how this expertise will be solicited/procured to provide sufficient technical oversight and assistance in project selection and sub-grant work.
7. Project budget.
 - a. Applicants must use the template (https://dec.vermont.gov/sites/dec/files/WID/CWIP/2021-3-23_BudgetTemplate.xlsx) provided on the CWIP applicant resources page. A budget narrative is optional in the notes section, but well-explained budgets will score more highly.
 - b. Program Delivery costs should not exceed 15% of the total award request. Technical support services provided to sub-grantees (if applicable) should be budgeted as part of project completion costs. Block grant applicants should bundle projected subgrantee direct and indirect expenses into their projected Project Completion costs under the Contractual line item. Project Completion and Program Delivery costs are defined further in the CWIP SFY21 Funding Policy (https://dec.vermont.gov/sites/dec/files/wsm/erp/docs/2021-02-04_FINAL_FY21_CWIPFundingPolicy_signed.pdf).
 - c. Funding cannot be used to support items or tasks listed as ineligible in the CWIP State Fiscal Year 2021 Funding Policy (https://dec.vermont.gov/sites/dec/files/wsm/erp/docs/2021-02-04_FINAL_FY21_CWIPFundingPolicy_signed.pdf).
 - d. All costs associated with developing or submitting documents in response to this solicitation and/or in providing oral or written clarification of its content shall be borne by the applicant.
 - e. State requires applicants to secure accurate estimates for the proposal's budget, including working with contractors to secure quotes/bids during the proposal development process. The quote should be itemized and applies to any project requiring work to subcontracted and must be included in the bidder's proposal.
8. A current and complete Risk Assessment Questionnaire. (<https://dec.vermont.gov/sites/dec/files/aid/Finance/Risk%20Assessment.pdf>)
9. A current and complete Certification of Good Standing. (<https://agriculture.vermont.gov/sites/agriculture/files/documents/GoodStandingCERT.pdf>)

Milestones/Deliverables table that must be included in the proposal (please complete target completion dates):

Milestone	Deliverable	Target Completion
Project initiated; sub-grantee proposals solicited	Executed grant agreement, Sub-grant application solicitation materials such as application template and press release on funding opportunity	[DATE]
Subgrantee applications reviewed, prioritized and selected.	Applications, prioritization and selection documentation, completed batch import file (BIF) for projects not in the Watershed Projects Database (may be an nForm by time of final reporting).	[DATE]
Project update(s)	Interim report(s) with update(s) on status of projects in development; regular check-in(s) with Technical Project Manager.	[DATE(S)]

Milestone	Deliverable	Target Completion
Sub-grantee project development complete	Standardized M&Ds by project type.	[DATE]
Project complete	Block Grant Final Performance Report (may be an online nForm by time of final reporting), Block Grant Final Photo Report (may be an online nForm by time of final reporting), press release and list of the entities to whom the press release was sent, Compiled deliverables from sub-grantees; Form 430-M (if applicable); Final Form 430 Invoice.	[DATE] - Should be at least one month before proposed grant closure date.

Scoring Criteria and Selection

Proposals will be reviewed and evaluated by three or more State staff members using a standardized scoring matrix. Review assistance may be sought from other interested parties having relevant knowledge. Proposals must include all content listed above and will be evaluated against the scoring criteria listed below. Incomplete proposals will not be reviewed. The selection committee may elect to interview bidders prior to final selection.

1. Proposal is clear and concise – **5%**
2. Proposal reflects appropriate qualifications and experience to perform Scope of Work – **45%**
3. Proposal demonstrates an understanding of the project purpose and deliverables, and adequately addresses how the work will be accomplished in a timely and effective manner – **30%**
4. Proposal budget is clear, complete, and cost-competitive in terms of \$/performance measure achieved and proposed leverage – **20%**
 - a. All costs listed in the budget (including all hourly rates, number of hours, description of supplies, leveraged funds, etc.) are fully explained and descriptions are easily understood.
 - b. Budget items align with eligible costs.
 - c. Calculations are correct, itemized quotes are included in proposal if relevant.
 - d. NICRA (if applicable) included in attachments

Reservation of State's Rights

The State 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;
- 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.). If uncertain of whether a condition qualifies as a technicality, consult with the OPC or AGO for clarification. For example, a late bid is NOT considered a technicality;
- to make purchases outside of the awarded contracts where it is deemed in the best interest of the State; and
- to obtain clarification or additional information.

Insurance

Respondents to this RFP should be aware that they will need to agree to the State of Vermont Customary Contract Provisions (Attachment C) in order to execute an agreement for this project. A sample of an organization's Certificate of Insurance is available at

http://dec.vermont.gov/sites/dec/files/aid/Finance/COI_Organization.pdf

And for a Municipality:

<https://dec.vermont.gov/sites/dec/files/aid/Finance/COI%20Municipal.pdf>

Special care should be paid to Workers' Compensation coverage for out-of-state Vendors. Vermont statute requires insurance carriers be specifically licensed to write Workers' Compensation coverage in

Vermont. Out-of-state Vendors may have Workers' Compensation coverage valid in their home state, but their carrier may not be licensed to cover workers' compensation for work actually performed by their employees in Vermont.

Confidentiality

After conclusion of the contracting 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

- Attachment A: SFA – Standard Contract for Services
- Attachment C – Standard State Provisions for Contracts and Grants, Revised December 15, 2017


Vermont Department of Environmental Conservation
Agency of Natural Resources

1. **Parties:** This is a contract for services between the State of Vermont, Department of Environmental Conservation (hereinafter called “State”), and _____ with principal place of business at _____ hereinafter called “Contractor). Contractor’s form of business organization is a _____. It is the Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter:** The subject matter of this contract is services generally on the subject of _____. Detailed services to be provided by the contractor are described in Attachment A – Scope of Work.
3. **Maximum Amount:** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$ _____.
4. **Contract Term:** The period of contractor’s performance shall begin on _____ and end on _____. This contract may be renewed for up to 2 additional one-year periods upon written agreement by the State and the Contractor.
5. **Prior Approvals:** This contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.
6. **Amendment:** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor. No amendment will be 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.
7. **Termination for Convenience:** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.
8. **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.
9. **Matching Funds:** This contract cannot be used as match for the purpose of obtaining additional federal funds by the contractor without the written approval from the State
10. **Source of Funds:** State Funds (CWF - CWIP SFY22 Dam Removal DIBG).
11. **Attachments:** This contract consists of the following attachments which are incorporated herein:
 - Attachment A - Specifications of Work to be Performed
 - Attachment B - Payment Provisions
 - Attachment C - Customary State Contract Provisions
 - Attachment D – Other Contract Provisions
12. **Order of Precedence:** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:
 - (1) Standard Contract
 - (2) Attachment D
 - (3) Attachment C (Standard Contract Provisions for Contracts and Grants)
 - (4) Attachment A
 - (5) Attachment B

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

- 1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.
- 2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

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

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Party or any third party.
- 8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein

are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

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

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or

acquired by the Party in the performance of this agreement. Records produced or acquired in a machine-readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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

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

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

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

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

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

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

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

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

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

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.

C. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)