



## MEMO

Date: October 4, 2021  
To: Executive Committee  
From: Bonnie Waninger, Executive Director  
Re: Contract/Agreement Approvals ADDITION

### GRANTS, CONTRACTS & SERVICE AGREEMENTS RECEIVED

(Contracts and agreements valued at more than \$25,000)

#### VT Department of Environmental Conservation – Clean Water Service Provider Start Up

☒ **ACTION REQUESTED:** Authorize the Executive Director to sign the agreement.

##### **Scope of Work:**

- 1) Clean Water Service Provider (CWSP) Start Up: develop and maintain a website, set up subaward tracking processes, set up project tracking processes, set up accounting and legal services, develop CWSP policies, participate in meetings with the state to establish CWSP operations, and process invoices/direct billed administration.
- 2) Basin Water Quality Council (BWQC) Start Up: establish and empanel the BWQC, capacity development/training, BWQC meeting rules/policies/bylaws, BWQC meetings during start-up, and prepare for procurement.
- 3) Post-BWQC Formation: Placeholder language to include additional scope of work and additional funding for Phase 3 work to support the transition of the Grantee and their BWQC to operation.

**Contract Amount:** \$55,195 (Phases 1 and 2 only)

**Performance Period:** Upon signature by the State – 06/30/22 (Phases 1 and 2 only)

**Staff:** Grace Vinson (primary), Bonnie Waninger, Nancy Chartrand, Ashley Andrews

**Notes:** DEC updated the agreement to reflect CWSP concerns.

- 1) Attachment D was incorporated into item 13 of the award. While other agencies and departments of the State use strikeout when a section has been superseded, it is not DEC policy to strike out templated language. Attachment D now is referred to in Section 13 on page 2 of the agreement to clarify it as a substitution.
- 2) CWSPs expressed caution that DEC was requiring cost tracking by subtask with the associated maximum limit by subtask as this would be administratively prohibitive. DEC deleted the “maximum” limit per subtasks in the milestone table. ANR’s portal of invoice submission - ANROnline – brackets payment by Phase rather than subtask. Proof of this was provided via email and will be saved in the contract file.

## STATE OF VERMONT GRANT AGREEMENT

## Part 1-Grant Award Detail

## SECTION I - GENERAL GRANT INFORMATION

<sup>1</sup> Grant #: 2021-CWSP-WID-06		<sup>2</sup> Original <input checked="" type="checkbox"/>	Amendment #
<sup>3</sup> Grant Title: Clean Water Service Provider Start-up Grants			
<sup>4</sup> Amount Previously Awarded: \$	<sup>5</sup> Amount Awarded This Action: \$55,195.00	<sup>6</sup> Total Award Amount: \$55,195.00	
<sup>7</sup> Award Start Date: Upon Signature	<sup>8</sup> Award End Date: June 30, 2022	<sup>9</sup> Subrecipient Award: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
<sup>10</sup> Vendor #: 43332	<sup>11</sup> Grantee Name: Central Vermont Regional Planning Commission		
<sup>12</sup> Grantee Address: 29 Main St #4			
<sup>13</sup> City: Montpelier	<sup>14</sup> State: VT	<sup>15</sup> Zip Code: 05602	
<sup>16</sup> State Granting Agency: Department of Environmental Conservation		<sup>17</sup> Business Unit:	
<sup>18</sup> Performance Measures: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	<sup>19</sup> Match/In-Kind: N/A Description:		
<sup>20</sup> If this action is an amendment, the following is amended: Amount: Funding Allocation: Performance Period: <input type="checkbox"/> Scope of Work: <input type="checkbox"/> Other: <input type="checkbox"/>			

## SECTION II - SUBRECIPIENT AWARD INFORMATION

<sup>21</sup> Grantee DUNS #:	<sup>22</sup> Indirect Rate: N/A % (Approved rate or de minimis 10%)	<sup>23</sup> FFATA: YES <input type="checkbox"/> NO <input type="checkbox"/>
<sup>24</sup> Grantee Fiscal Year End Month (MM format):	<sup>25</sup> R&D: No	
<sup>26</sup> DUNS Registered Name (if different than VISION Vendor Name in Box 11):		

## SECTION III - FUNDING ALLOCATION

STATE FUNDS					Required Federal Award Information		
Fund Type	<sup>27</sup> Awarded Previously	<sup>28</sup> Award This Action	<sup>29</sup> Cumulative Award	<sup>30</sup> Special & Other Fund Descriptions			
General Fund	\$		\$0.00				
Special Fund		\$55,195	\$55,195	CWF Multi-Sector Support			
Global Commitment (non-subrecipient funds)			\$0.00				
Other State Funds			\$0.00				
FEDERAL FUNDS (includes subrecipient Global Commitment funds)					<sup>36</sup> FAIN	<sup>37</sup> Fed Award Date	<sup>38</sup> Total Federal Award
<sup>31</sup> CFDA#	<sup>32</sup> Program Title	<sup>33</sup> Awarded Previously	<sup>34</sup> Award This Action	<sup>35</sup> Cumulative Award			
				\$0.00			
<sup>39</sup> Federal Awarding Agency:		<sup>40</sup> Federal Award Project Descr:					
				\$0.00			
Federal Awarding Agency:		Federal Award Project Descr:					
				\$0.00			
Federal Awarding Agency:		Federal Award Project Descr:					
				\$0.00			
Federal Awarding Agency:		Federal Award Project Descr:					
				\$0.00			
Federal Awarding Agency:		Federal Award Project Descr:					
Total Awarded - All Funds		\$0.00	\$0.00	\$0.00			

## SECTION IV - CONTACT INFORMATION

<sup>40</sup> STATE GRANTING AGENCY	<sup>41</sup> GRANTEE
NAME: R Green	NAME: Bonnie Waninger
TITLE: Grants Management Specialist	TITLE: Executive Director
PHONE: 802-490-6112	PHONE: (802) 229-0389
EMAIL: Rachel.Green@vermont.gov	EMAIL: waninger@cvregion.com



## SFA - STANDARD GRANT AGREEMENT

1. Parties: This is a Grant Agreement between the State of Vermont, Department of Environmental Conservation (hereinafter called "State"), and Central Vermont Regional Planning Commission with principal place of business at Montpelier, VT (hereinafter called "Grantee"). It is the Grantee's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Grantee is required to have a Vermont Department of Taxes Business Account Number.
2. Subject Matter: The subject matter of this Grant Agreement is for services generally on the subject of a investing in Clean Water Start-up programs for a regional area. Detailed scope to be provided by the Grantee are described in Attachment A, Scope of Work to be Performed.
3. Maximum Amount: In consideration of the scope of work, the State agrees to pay Grantee, in accordance with the payment provisions specified in Attachment B, Payment Provisions, a sum not to exceed \$55,195.00. Attachment B, Payment Provision provides details on how the grantee will be reimbursed. This grant award cannot be used as match for the purpose of obtaining additional federal funds by the Grantee without written approval from the State.
4. Subcontracting: Grantee shall not assign labor duties to a subcontractor without the prior written approval from the State.
5. Procurement: The Grantee certifies that for any equipment, supplies, and/or services outside of their organization, that they have and will follow their procurement policy.
6. Ownership and Disposition Assets: Grantee must submit a written request to retain the asset at the end of grant term for the same use and intended purpose as outlined in this agreement. The written request should include: description of equipment, date of purchase, original cost and estimated current market value.
7. Source of Funds: State funds.
8. Grant Term: The period of Grantee's performance shall begin upon date of execution, signified by the date of signature by the State and end on June 30, 2022.
9. Amendment: No changes, modifications, or amendments in the terms and conditions of this Grant Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Grantee. No amendment will 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.
10. Cancellation: This Grant Agreement may be cancelled by either party by giving written notice at least thirty (30) days in advance.
11. Fiscal Year: The Grantee's fiscal year starts July 1 and ends June 30.
12. Work product ownership: Upon full payment by the State, all products of the Grantee's work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by Grantee.

13. Attachments: This Grant consists the following attachments that are incorporated herein:

Attachment A - Scope of Work to be Performed

Attachment B – Payment Provisions

Attachment C - Customary State Grant Provisions

Attachment D - Other Provisions

**WE, THE UNDERSIGNED PARTIES, AGREE TO BE BOUND BY THIS GRANT.**

**STATE OF VERMONT**

**By:**

\_\_\_\_\_

**Commissioner**

**Dept. of Environmental Conservation**

**Date:** \_\_\_\_\_

**GRANTEE**

**By:**

\_\_\_\_\_

**Name: (Print)** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## **Attachment A**

### **Scope of Work to be Performed**

#### **Grantee Responsibilities:**

1. **Phase One: Clean Water Service Provider (CWSP) Start-up.** This grant is to assist the Grantee in preparing for assignment as a Clean Water Service Provider by completing the following steps :
  - a. **Develop and Maintain a Website**  
 The Grantee will need to establish a dedicated website and/or webpage on their host organization's website dedicated to Grantee activities and notices. The website/webpage shall include links to Basin Water Quality Council (BWQC) meeting minutes, Grantee policies and procedures, information on Grantee procurement, information on Grantee projects, and any other relevant information related to Grantee service. Creation of the website/webpage shall include obvious navigation to easily find the website/webpage. The website shall be kept up to date, during the period of CWSP service, and maintained in accordance with applicable guidance. While not all information will be available during the start-up period, Grantee should set up their website/webpage so that it is ready to publish documents and policies once the CWSP is fully operational. In addition, the Grantee will establish a link to relevant Act 76/DEC websites (e.g., Act 76, Tactical Basin Planning Basin 08 Page, Watershed Projects Database, Clean Water Portal, etc.).
  - b. **Set up Subaward Tracking Processes.** Once awarded a Formula Grant, the Grantee may issue subawards in the form of grants and contracts to entities to standup clean water projects within the Winooski River basin. Accordingly, the Grantee must establish a tracking system for managing these 'grants-out' and 'contracts-out'. The Grantee will also need to report on their Formula grant activities and will establish reporting systems to provide information and reports required by the State. Development of tracking and reporting systems must be performed in coordination with the State to ensure there is no duplication of effort and that the Grantee is organizing itself to track and report the right information.
  - c. **Set up Project Tracking Processes**  
 The Grantee will standup clean water projects either directly or by procuring services to stand up those projects, and must establish sufficient project tracking systems so that the Grantee can report on projects, including operations and maintenance activities, as required by the State, while supporting any additional information of relevance to the Grantee or its BWQC. As the State will develop a centralized project tracking system for use by all CWSPs, development of Basin-specific tracking and reporting systems must be performed in coordination with the State to ensure there is no duplication of effort and that the Grantee is organizing itself to track and report the right information. In conjunction with other CWSPs, grantee will develop Standard Operating Procedures for tracking and reporting systems to help ensure information flow between sub-grantors, other CWSPs, and the State to ensure that services are delivered consistently, and to foster continuity of operations.

d. Set up Accounting and Legal Services

The Grantee shall implement proper accounting protocols, processes and systems to comply with State requirements for reporting, financial management, and internal controls. The Grantee may also need legal assistance with relevant aspects of Grantee responsibilities.

e. Develop CWSP Policies

The Grantee will develop required policies (or submit their current policy, if they have one that meets State requirements), including: subgrant/procurement policy, conflict of interest policy, personnel policy, internal controls policy, accounting/financial reporting, public participation, and a Grantee operating policy. If the Grantee relies on current policies of the host-organization, any changes to those policies to comply with Grantee specific requirements (such as those contained in Act 76, Rule, Guidance, or grant documents) may be documented in an 'amendment' or 'addendum' that contains the Grantee-specific policy changes. Note, that Act 76 states that the role of the BWQC is to set policy for the Grantee; when developing and establishing policies that relate to Grantee functions, the Grantee shall coordinate and shall seek review and adoption by the BWQC.

f. Participate in Meetings with the State to establish CWSP operations

The State will host meetings on Guidance Development, and other topics related to CWSP service during the Start-up period. The Grantee, in their role as a CWSP, will attend meetings on Guidance Development with the State as appropriate.

g. Process Invoices/Direct Billed Administration

**2. Phase Two: BWQC Start-up.**

a. Establish and Empanel the BWQC

Working with the appropriate statutory partners and pursuant to the applicable rules and requirements for selection of each member, the Grantee will identify the 9 members of their BWQC for their Basin. Grantee and BWQCs should make a substantial effort to include diversity and equity considerations in their decision making process with regard to empaneling and facilitation of the BWQC.

b. Capacity Development/Training

The Grantee will train selected or prospective BWQC members, as appropriate. The Grantee may also conduct outreach to the stakeholders in their basin to update them on Grantee activities during start-up. This item is reserved for Grantee expenses for this activity; payment to a BWQC that would flow through the Grantee for participation in any trainings is covered in deliverable 'd', below.

c. BWQC Meeting Rules/Policies/Bylaws

The Grantee, in conjunction with their BWQC members shall develop rules for BWQC meetings, as well as any applicable policies and/or bylaws related to BWQC meetings and responsibilities. Rules, policies and bylaws must be written consistent with the applicable statute, rule and guidance.

d. **BWQC Meetings During Start-up**

BWQC members will be expected to attend certain trainings and meetings with the State, as well as select meetings with the Grantee during the Start-up period. This deliverable is reserved for paying two municipal and one land conservation organization representative for their attendance at four of these meetings (\$50/hour, plus reasonable travel expenses for in-person meetings).

e. **Prepare for Procurement**

The Grantee may choose to engage in certain procurement activities during the Start-up period, in preparation of full Grantee operations, in accordance with the CWSP Rule. Procurement activities conducted under this agreement may consist of establishing a pre-qualification process, which may also include pre-qualification of entities, and/or issuance of retainer contracts, but shall not commit dollars to the advancement of projects. Note, that Act 76 states that the role of the BWQC is to set policy for the Grantee; when developing and establishing policies that relate to Grantee functions, the Grantee shall coordinate and shall seek review and adoption by the BWQC.

3. **Phase Three: Post-BWQC Formation.**

This agreement is authorized to be amended to include additional scope of work and additional funding for Phase 3 work, to support the transition of the Grantee and their BWQC to operation within Water Quality Restoration Formula Grant awards authorized pursuant to 10 VSA §926. The State will initiate this amendment process, which may involve an additional Request for Information from the Grantee. Phase 3 work includes but may not be limited to: adoption of project management tools including project dashboards and databases; support of BWQC decision-making for project advancement; identification of projects for consideration by the BWQC; development of O&M protocols, capacity, policies, and relationships; development of local priority and co-benefit scoring; and, legal expenses pursuant to the CWSP Rule.

Performance Measure	Deliverable	Timeframe	Proposed Payment
<u>Phase 1</u>			
• Develop a website/webpage for CWSP and BWQC notices and activities	• Website/webpage description and link	December, 2021	\$5,512.00  billed no more frequently than monthly

Performance Measure	Deliverable	Timeframe	Proposed Payment
<ul style="list-style-type: none"> <li>Set up a grant/contract tracking system and grant reporting systems, to manage grant and contract issuance, and grant reporting to the State</li> </ul>	<ul style="list-style-type: none"> <li>Description of the grant/contract tracking system and grant reporting system (and access?)</li> </ul>	January, 2022	\$1,771.00  billed no more frequently than monthly
<ul style="list-style-type: none"> <li>Set up a project tracking system, for managing CWSP funded projects, that integrates with the State's project tracking</li> </ul>	<ul style="list-style-type: none"> <li>Description of the project tracking system and access?</li> </ul>	January, 2022	\$1,495.00  billed no more frequently than monthly
<ul style="list-style-type: none"> <li>Ensure all CWSP legal and accounting requirements will be sufficient for CWSP operations</li> </ul>	<ul style="list-style-type: none"> <li>Report on upgrades to/status of legal/accounting framework for CWSP operations</li> </ul>	March, 2022	\$2,282.00 plus \$1,448 for sub-contractor: \$3,730.00  billed no more frequently than monthly
<ul style="list-style-type: none"> <li>Draft required CWSP policies</li> </ul>	<ul style="list-style-type: none"> <li>Subgrant policy</li> <li>Conflict of Interest policy</li> <li>Personnel policy</li> <li>Internal controls policy</li> <li>Other required policies</li> </ul>	June, 2022	\$5,805.00  billed no more frequently than monthly
<ul style="list-style-type: none"> <li>Provide input to development of Secretary's Guidance, by participating in Act 76 Advisory Group Meetings</li> </ul>	<ul style="list-style-type: none"> <li>Summaries of meeting outcomes and written feedback on policies/proposals as requested by the State</li> </ul>	Ongoing	\$7,082.00  billed no more frequently than monthly
<ul style="list-style-type: none"> <li>Process Invoices/Direct Billed Administration</li> </ul>	<ul style="list-style-type: none"> <li>Invoices, etc.</li> </ul>	Ongoing	\$5,000.00
<u>Phase 2</u>			



Performance Measure	Deliverable	Timeframe	Proposed Payment
<ul style="list-style-type: none"> <li>Establish and empanel the BWQC</li> </ul>	<ul style="list-style-type: none"> <li>List of BWQC members, affiliation and contact information</li> </ul>	December, 2021	\$2,431.00  billed no more frequently than monthly
<ul style="list-style-type: none"> <li>BWQC capacity development and training</li> </ul>	<ul style="list-style-type: none"> <li>List of any trainings, dates, attendees, and agenda. List of outreach activities conducted to stakeholders in the basin. Conduct training, and if needed, provide support to community groups to foster development of organizations that can serve on the BWQC</li> </ul>	March, 2022	\$11,545.00  billed no more frequently than monthly
<ul style="list-style-type: none"> <li>Develop and Adopt BWQC Meeting Rules and Policies</li> </ul>	<ul style="list-style-type: none"> <li>Copy of adopted rules/policies</li> </ul>	February, 2022	\$6,083.00  billed no more frequently than monthly
<ul style="list-style-type: none"> <li>BWQC member attendance at applicable meetings and trainings during Start-up</li> </ul>	<ul style="list-style-type: none"> <li>Attendance at meetings</li> </ul>	Ongoing	\$1,200.00  billed no more frequently than monthly
<ul style="list-style-type: none"> <li>Conduct RFQs, procurement for select services related to stand up clean water projects, as appropriate</li> </ul>	<ul style="list-style-type: none"> <li>List of services procured</li> </ul>	April, 2022	\$3,541.00  billed no more frequently than monthly
<b>Total</b>			<b>\$55,195.00</b>

## Attachment B

### Payment Provisions

This grant is a performance based grant. Payments made to the grantee by the State are based on the successful completion of performance measures. Successful completion of each measure is clearly outlined in the scope of work. If the grantee is unable to obtain successful completion of a performance measure within the terms and conditions of the grant agreement, the Grantee may only receive a portion of the payment for that measure if partially completed or will not receive payment at all if substantial performance of that measure is not demonstrated. Payments will be made in accordance with the Table 1 Deliverables Schedule in Attachment A.

The State will measure sufficient progress by examining the performance required under the work plan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. The State may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

#### Risk-Based Assessment:

Risk Level: Low

<b>Risk Level</b>	<b>Monitoring Requirements</b>
Low	- Final performance report required.
Moderate	- Grantee is required to submit a biannual progress report(s). Progress report(s) must include: summary of progress made on deliverables within reporting timeframe, milestone status updates, technical/cost/schedule issues encountered, and work planned for next period.
High	- Grantee is required to submit quarterly progress reports (see above). - Grantee must document a course of corrective actions in order to maintain future eligibility for Vermont DEC funds. Grantees have a period of three years to complete corrective actions. If after three years no corrective actions have been taken, VDEC will no longer provide funds to the organization.

- These monitoring requirements are required deliverables even when not listed explicitly in the deliverables table in Attachment A.

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The Grantee shall:

- ☒ Maintain a copy of all receipts on file for review upon request by the State,  
☐ Include a copy of all receipts for costs requested for reimbursement.  
☐ Other:

Final Payment: Final payment will be paid upon receipt and satisfactory review of all deliverables, as described in the scope of work, a final financial report documenting expenditure of 100% of grant funds, and where appropriate, documentation of required match.

#### Other Provisions

- Upload all completed forms to: <https://anronline.vermont.gov/home>
- Grantee is conferred blanket approval from the State to execute any subcontracts associated with this Agreement and related amendments. As part of the procurement process, the Grantee/Contractor must verify and document that none of its subgrantees/subcontractors are listed on the federal debarment list located at <https://sam.gov/content/home> or the State debarment list maintained by the Vermont Buildings and General Services (BGS) and located at: <https://bgs.vermont.gov/purchasing-contracting/debarment>. Both the name of the entity and name of the primary point of contact must be checked.



Vermont Department of Environmental Conservation

Agency of Natural Resources

## Form 430 Request for Funds

*Form must be filled out entirely before payment is released*

**Grantee Name:**

**Grant #:**                      **Purchase Order #:**                      **Payment#:**                      **Amount Requested:**

### Performance Measures and Deliverables:

Performance Measure and Submitted Deliverable	Budget Amount	Amount Requested	Remaining Amount	Total Match Documented (if applicable, use total from Form 430-M)	Match Committed (if applicable)
1 –	\$	\$	\$	\$	
2 –	\$	\$	\$	\$	
3 –	\$	\$	\$	\$	
4 -	\$	\$	\$	\$	
5 – Final report.	\$	\$	\$	\$	
<b>Total</b>	\$	\$	\$	\$	\$

### Approvals for Payment

**Signed by:**

Grantee: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

*The Grantee certifies that deliverables being billed on this invoice have been completed as outlined in the grant agreement.*

**Please upload this completed form to: <https://anronline.vermont.gov/home>**

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

**1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

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

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

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

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

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

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Party or any third party.

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

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

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

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

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

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

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

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

required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

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

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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

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

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

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

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

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

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

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

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

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

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

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

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

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

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

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

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

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

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

## **27. Termination:**

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise

upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

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

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

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

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

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.  
For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**32. Requirements Pertaining Only to State-Funded Grants:**



- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents:
  - (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and
  - (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

## **Attachment D**

### **Other Provisions**

1. Work Product Clause. Replace Paragraph 11 in the Contract with the following:

This clause shall replace item #12 on page 1 of this agreement. The parties agree that ownership of all data, papers, reports, forms, or other material collected or produced by the Contractor, under this contract, (the "work product") shall belong to the Contractor. Upon a request made by the State, the Contractor shall provide, free of cost, copies of all such work product no later than 30 days from the date of the request. The State shall have a nonexclusive, nontransferable, irrevocable, royalty free paid-up license to use or have used the work product for or on behalf of the State during the pendency of the agreement and thereafter. The State may provide the work product to its contractors, grantees, community partners, and to other local, state, and federal governmental entities for their non-commercial use.