



# VERMONT

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## DEPARTMENT OF PUBLIC SERVICE

### REQUEST FOR PROPOSAL

#### For Finance Expert Services:

**Review of Proposed Ownership Transfer of Entergy Nuclear Vermont Yankee, LLC to  
NorthStar Decommissioning Holdings, LLC**

**Issue Date:** January 31, 2017; Revised February 15, 2017  
**Response Due Date:** ~~February 15, 2017~~ February 24, 2017 at 4:30 PM

**Department Contact:** Aaron Kisicki  
Vermont Department of Public Service  
112 State Street – Drawer 20  
Montpelier, VT 05620-2601  
Phone: (802) 828-3785  
Email: [Aaron.Kisicki@vermont.gov](mailto:Aaron.Kisicki@vermont.gov)

**VERMONT DEPARTMENT OF PUBLIC SERVICE  
REQUEST FOR PROPOSALS  
For Finance Expert Services:  
Review of Proposed Ownership Transfer of Energy Nuclear Vermont Yankee, LLC to  
NorthStar Decommissioning Holdings, LLC**

**January 31, 2017; Revised February 15, 2017**

The Vermont Department of Public Service (“Department” or “DPS”) which represents the public interest and Vermont ratepayers in utility cases before the Vermont Public Service Board (“Board” or “PSB”), federal regulatory agencies, and state and federal courts, is seeking proposals from qualified entities for ~~telecommunications~~-finance expert services to assist the Department in its review of a proposed transfer of ownership of Entergy Nuclear Vermont Yankee, LLC from Entergy Nuclear Vermont Investment Company, LLC to NorthStar Decommissioning, LLC.

The Department is seeking to retain a consultant (or consultants) with technical expertise in financial and economic analysis of the proposed transaction. Consultants are invited to respond either in part or in the entirety to this Request for Proposals (“RFP”), depending on the consultant’s experience.

The selected contractor(s) is expected to provide assistance to the Department and participate in a contested administrative proceeding before the PSB, which has ultimate authority over approval of the proposed transaction. The selected contractor’s preparation for and participation in the PSB proceeding is expected to include preparing discovery questions and responses, drafting prefiled testimony to be submitted to the PSB, and offering live testimony to the PSB.

**Proposals are due by 4:30 p.m., Wednesday, February ~~15~~24, 2017.** There is no guarantee, express or implied, regarding the Department’s future needs. The Department retains the discretion to hire alternative or additional consultants during the contract period. The Department anticipates that the contract period will last for a period of up to two (2) years, with the possibility for renewal. The Department, however, anticipates that the majority of the work associated with this RFP will be completed within one (1) year of selection of a contractor(s). One (1) original signed hard copy, three (3) additional hard copies, and an electronic copy of the proposal must be delivered to the attention of Aaron Kisicki, Department of Public Service. Proposals and questions can be submitted any time prior to the deadline, and should be directed to:

Aaron Kisicki  
Vermont Department of Public Service  
112 State Street – Drawer 20  
Montpelier, VT 05620-2601  
Phone: (802) 828-3785  
Email: Aaron.Kisicki@vermont.gov

## **BACKGROUND**

On December 16, 2016, NorthStar Decommissioning Holdings, LLC (“NorthStar DH”), NorthStar Group Holdings, LLC, LVI Parent Corp., NorthStar Group Services, Inc., NorthStar Nuclear Decommissioning Company, LLC (“NorthStar NDC”; all entities together, “NorthStar”), Entergy Nuclear Vermont Investment Company, LLC (“ENVIC”), and Entergy Nuclear Operations, Inc. (together “Entergy”) filed a joint petition with the PSB requesting approval of a transfer of ownership of Entergy Nuclear Vermont Yankee, LLC (“ENVY”) – which owns the dormant Vermont Yankee Nuclear Power Station (“VY Station”) – from ENVIC to NorthStar DH. The transfer will facilitate NorthStar NDC’s commencement of decommissioning, dismantlement, and site restoration activities at the VY Station site. The petition also seeks to establish site restoration standards that will guide the scope of work required to release the site for other use. NorthStar and Entergy have requested that the PSB approve the transfer by March 31, 2018.

The Department’s primary regulatory role in this PSB proceeding is to determine whether the proposed transfer will promote the public good of Vermonters. The selected consultant(s) will assist the Department’s legal and technical staff in its review of the proposed transfer through legal criteria established under Vermont statutory law and PSB precedent. The Department anticipates that the majority work associated with this RFP will occur throughout within the 2017 calendar year. The Department also expects that the selected contractor(s) will need to be prepared to commence work in response to this RFP immediately upon selection.

## **MINIMUM SCOPE OF WORK REQUESTED**

The selected contractor(s) will provide expert witness support during the course of the PSB proceeding to review the proposed transaction. The Department expects the work scope to include, but not necessarily be limited to, the tasks listed below. The specific tasks outlined in the scope of work are related to financial and/or economic analysis. The scope of work will be subject to change based on information provided by NorthStar or Entergy, or requests from the PSB during the pendency of the proceeding.

### **I. General Tasks and Requirements**

- 1) Review and provide analysis on all filings made by the Department, NorthStar, Entergy, and any intervenors granted party status in the PSB proceeding, including all prefiled testimony and exhibits from NorthStar, Entergy, and/or any other parties, and all discovery requests and responses;
- 2) Assist the Department in developing and drafting written discovery and information requests for service on other parties to the PSB proceeding;
- 3) Assist the Department in developing and drafting responses to discovery requests that are served on the Department by other parties to the PSB proceeding;
- 4) Draft and revise as necessary prefiled testimony related to the issues outlined in this RFP;
- 5) Present live testimony at technical hearing(s) before the PSB;
- 6) Assist the Department in presenting its findings and recommendations to the PSB.

## **II. Specific Tasks By Subject Area**

### **A. Financial & Economic Analysis**

#### **1) *Task 1 - Company Structure: Financial Stability and Soundness***

- a) Assess the financial capacity of NorthStar and its subsidiaries to assume the obligations acquired from Entergy subject to the jurisdiction of the PSB as a result of the transfer. This analysis is expected to include an assessment of NorthStar's financial capacity to complete all decommissioning, dismantlement, and site restoration activities necessary release of the VY site for use consistent with site restoration standards established as part of the PSB proceeding.
- b) Assess the financial capacity of Entergy and its subsidiaries to complete all decommissioning, dismantlement, and site restoration activities necessary for release of the VY site for use consistent with site restoration standards established as part of the PSB proceeding.
- c) Assess and analyze the overall financial strength and capitalization of NorthStar's (and its subsidiaries') major partners in the VY Station decommissioning and site restoration project, including Areva, Burns & McDonnell, and Waste Control Specialists, LLC.
- d) Assessment the relative advantages and disadvantages of NorthStar's acquisition versus continued ownership by Entergy.
- e) Conduct a detailed examination of the proposed transaction(s) where ownership is transferred from an Entergy subsidiary to a NorthStar subsidiary, the rationale for each step in the transaction, and the financial aspects of the proposed ownership structures.
- f) Conduct an examination of NorthStar (and its subsidiaries) company structures that assesses their financial stability and soundness on a pre- and post-transfer basis. The pre-transfer financial examination shall cover the five (5) year historical period from 2011 through 2016. The post transaction financial examination shall cover a prospective period of sixteen (16) years from 2017 through 2032.
- g) Assess the financial aspects and risks of Northstar's business model, including NorthStar's incentives and contingencies, and how it will earn money.
- h) Examine and assess the financial impacts and risks related to any lingering liabilities remaining after the decommissioning, dismantlement, and site restoration activities necessary for release of the VY site for use consistent with site restoration standards established as part of the PSB proceeding.

- i) Examine and assess the financial impacts and risks related to transferring control of the VY Nuclear Decommissioning Trust and Site Restoration Trust to NorthStar (or its subsidiary), including the resulting risks in the event that insufficient funds exist to complete decommissioning, dismantlement, and site restoration activities necessary for release of the VY site for use consistent with site restoration standards established as part of the PSB proceeding.
- j) Examine and assess the financial impacts and risks related to transferring control of the VY Nuclear Decommissioning Trust and Site Restoration Trust to NorthStar (or its subsidiary) including the proper disposition of any funds remaining after decommissioning, dismantlement, and site restoration activities necessary for release of the VY site for use consistent with site restoration standards established as part of the PSB proceeding.
- k) Assess the ability of NorthStar to satisfy any existing debt covenants and/or any debt covenants that arise out of the transfer. This assessment is expected to include an analysis of assets pledged by NorthStar as collateral for any debt covenants arising out of the transaction and how the risk associated with such arrangements may affect Vermont ratepayers.
- l) Examine and assess the policies and practices of NorthStar related to the separation of and accounting for affiliate company transactions. This examination should include analysis of any affiliate transactions between operating units, and between any operating unit and the parent corporation or holding company.

### **SCHEDULE**

This will be an on-call contract with the selected contractor(s) throughout the pendency of the PSB proceeding related to the proposed transfer. The Department anticipates that the PSB will adopt a schedule in this proceeding in early-to-mid February 2017. The Department also anticipates that the proceeding schedule will require that the majority of the work associated with this RFP will be conducted throughout the 2017 calendar year. Discovery is expected to commence in February or March of 2017, with written testimony to follow in the second quarter of 2017. Live technical hearings before the PSB are likely to be held during the fourth quarter of 2017. The selected contractor(s) must be able to begin work immediately upon award of the contract.

### **SETTING**

General guidance and assistance will take place in the context of a general services consulting relationship between the Department and the selected contractor(s). The selected contractor(s) will be expected to respond to specific technical inquiries and assist with development of Department policy positions from time to time as the need arises and within a reasonable timeframe. The selected contractor(s) may be expected to write and to assist Department technical and legal staff in the preparation of written information requests, and provide a written summary of issues including findings and conclusions for review by the Department technical and legal staff. Field visits to facility sites may be necessary to review records and facilities, and interview appropriate individuals. The deliverable(s) of the Tasks outlined above will be prepared at the selected contractor(s) office(s) and sent electronically to the Department. One or more in-person meetings may be required to review the deliverables and/or to provide general guidance.

### **OVERSIGHT**

The overall contract will be managed by Aaron Kisicki, Special Counsel. Department personnel will be available for guidance and collaboration on related issues, proposed conclusions, policy formulation and articulation, and the drafting and filing of testimony. Contracts with the Department include performance criteria.

## **FINAL DELIVERABLES AND WORK PRODUCT**

The primary final deliverables and work product of the selected contractor(s) resulting from work conducted under a contract resulting from this Request for Proposals will consist of:

1. Preparation of a work plan and work schedule that allows time for Department technical and legal staff to review the selected contractor(s)' work in advance of filing, and within any schedule set by the PSB;
2. Preliminary identification and assessment of issues, risks, and proposed solutions and recommendations;
3. Preparation of and responses to information requests and evaluation of responses if any;
4. Written memoranda, and/or technical reports drafted in response to specific inquiries of the Department, including a description of the review methods, materials reviewed, conclusions, and, as requested, recommendations with supporting analysis;
5. Drafting and revision as needed of prefiled testimony in support of findings and recommendations;
6. Presentation of live testimony at technical hearing(s) before the PSB; and
7. Provide support to Department staff in preparing reports, testimony, and/or legal briefs related to this PSB proceeding and any appeal that may result therefrom.

The selected contractor(s) shall provide multiple electronic and hard copies of all deliverables, exhibits and written products that constitute supporting work papers and any material intended to be submitted as responsive to Department and/or third-party inquiries, or filed with the PSB. **Electronic Materials to be filed in final form shall be delivered to the Department in Word and Excel formats as appropriate.** The consultants further shall maintain the confidentiality of information and documents as specified and directed by the PSD or by order of the PSB.

Reimbursement for time and materials will be by voucher based upon the actual staff time spent, at the rates agreed upon, and upon other actual costs incurred based upon documentation acceptable to the Department, subject to the maximum amount indicated.

## **PROPOSAL FORMAT**

All respondents to this Request for Proposals (“RFP”) must include the following information:

1. A brief description of the firm, which includes its history, organizational structure, and qualifications of relevant professional staff, including names and resumes with detailed qualifications and levels of competence of all individuals proposed to perform services.
2. Respondents must complete the attached “Certificate of Compliance” and be able to enter a contract which contains all standard State of Vermont contract terms included in the attached “Attachment C” document.
3. A list of recent work performed, particularly including contracts with or appearances before utility regulatory agencies (if any), with a short narrative explaining the nature and extent of each such engagement. In the case of sworn testimony and depositions, please include a comprehensive list of all such appearances, including docket numbers of any contested cases, as well as the name and telephone number of a reference person familiar with the respondent’s work.
4. A discussion of the respondent staff’s expertise and experience relevant to the subject matter of this RFP.
5. A statement and discussion of the respondent's analysis of the RFP scope and requirements. This should include:
  - a. A proposed scope of services for the tasks listed and to which the respondent is choosing to respond, with an explanation of technical approaches and an outline of a proposed program for implementing the objectives of the RFP; and
  - b. Statements and discussion of anticipated major difficulties and problem areas, together with potential or recommended approaches for their solution.
6. A description of the rationale for the approach(es) identified, including:
  - a. An explanation of why the proposed approach is superior to other alternative approaches; and
  - b. A statement of the extent to which the proposed approach and program can be expected to meet or exceed the requirements of this RFP.
7. A scheduling proposal and work plan specifying the date upon which the respondent would be ready to commence work, and estimated hours needed to perform each task.
8. Explanation of all known or probable scheduling constraints, and/or limitations on staff availability.

9. The selected contractor(s) will be compensated on a time and material basis. Please indicate the following:
  - a. Fees for staff time, indicating the level of staff to be assigned, titles, hourly rates and estimated number of hours;
  - b. Travel expenses, including transportation costs, lodging, and meals, including “all-in” cost to attend meeting in Montpelier, Vermont; and
  - c. Description of all overhead and other costs that may be billed.
10. A declaratory statement identifying the respondent’s current or potential relationships, obligations and commitments with any of the participants, including NorthStar Decommissioning Holdings, LLC, any parent, subsidiary or affiliate company thereof, NorthStar Group Holdings, LLC, any parent, subsidiary or affiliate company thereof, LVI Parent Corp., any parent, subsidiary or affiliate company thereof, NorthStar Group Services, Inc., any parent, subsidiary or affiliate company thereof, NorthStar Nuclear Decommissioning Company, LLC, any parent, subsidiary or affiliate company thereof, Entergy Nuclear Vermont Investment Company, LLC, any parent, subsidiary or affiliate company thereof, Entergy Nuclear Operations, Inc., any parent, subsidiary or affiliate company thereof, or Entergy Nuclear Vermont Yankee, LLC, any parent, subsidiary, or affiliate company thereof.
11. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.

Self Reporting: For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the Certificate of Compliance (Attachment i) for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

Subcontractor Reporting: For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with 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). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired.

## **EVALUATION CRITERIA**

The Department will evaluate all proposals received based upon its assessment of the reasonableness of cost, completeness, and quality of the proposal, qualifications of the individuals proposed to perform the work, relevance of previous experience, and any other criteria it deems relevant. Acceptance or rejection of any or all proposals will be determined by the exercise of the Department's sole discretion.

## **REQUIREMENTS**

All proposals must be received no later than **4:30 p.m., Wednesday, February 15~~24~~, 2017** in hard copy and in electronic format.

One (1) original and signed, and two (2) additional hard copies should be sent to:

Aaron Kisicki  
Vermont Public Service Department  
112 State Street – Drawer 20  
Montpelier, VT 05620-2601

Electronic copies should be sent to:

Aaron.Kisicki@vermont.gov

The Department reserves the right to accept or reject any or all bids. The proposals will be evaluated by the Department's technical and legal staff. If a respondent is selected, it will be invited to negotiate a contract.

## **QUESTIONS CONCERNING RFP**

Questions about this RFP should be directed to:

Aaron Kisicki  
Vermont Public Service Department  
112 State Street – Drawer 20  
Montpelier, VT 05620-2601  
Phone: (802) 828-3785  
Email: Aaron.Kisicki@vermont.gov

## **TERMS AND CONDITIONS**

1. The Department reserves the right to reject any and all proposals received as a result of this RFP for any reason, to waive minor irregularities in any proposals received, to negotiate with any party in any manner deemed necessary to best serve the interests of the State, and to obtain clarification or additional information.
2. All responses and other information disclosed in connection with this RFP become the property of the Department and, once the resulting contract is finalized, may be subject to disclosure under the State's Access to Public Records Law, 1 V.S.A. § 315 et seq. It is the respondent's responsibility to identify any material included in the response that is considered by the respondent to be proprietary or otherwise exempt from public disclosure in the event of a public records request. It is also the respondent's responsibility to include a redacted copy of its response and include a written explanation for each marked section that would support a reasonable claim of exemption.
3. The Department shall not be responsible for any costs incurred by any party in preparation of any proposal submitted in response to this RFP.
4. The Department reserves the right to amend or cancel this RFP at any time if the best interest of the State requires such action.
5. News releases pertaining to this RFP, contract award, or the project shall not be made without prior written approval from the Department.
6. The Department will pay for actual work performed and expenses incurred under this project up to the specified contract amount. Specific payment provisions will be arrived at upon mutual agreement of the parties. All payments will require the submission of an itemized billing of work performed to date in sufficient detail to justify payment.
7. Any respondent submitting a proposal shall be an Equal Opportunity Employer. During the duration of the performance of this contract, the selected contractor will be expected to comply with all federal, state, and local laws respecting non-discrimination in employment.
8. All deliverables submitted by the selected contractor shall become the property of the Department and the State of Vermont.
9. The Department assumes no liability in any fashion with respect to this RFP or any matters related thereto. All prospective contractors and their subcontractors or successors, by their

participation in the RFP process, shall indemnify, save and hold the Department, and its employees and agents free and harmless from all lawsuits, causes of action, debts, rights, judgments, claims, demands, damages, losses and expenses or whatsoever kind in law or equity, known and unknown, foreseen and unforeseen, arising from or out of this RFP and/or any subsequent acts related thereto, including but not limited to the recommendation of a contractor and any action brought by an unsuccessful applicant.

10. The selected contractor must complete the attached “Certificate of Compliance” and will be required to enter into a standard Vermont State Contract, which will include all conditions included the standard “Attachment C” form, which is attached to this RFP.

### **ATTACHMENTS**

- i. Certificate of Compliance (must be completed and included with a response)
- ii. Attachment C: Standard State Contract Provisions (July 1, 2016)

## CERTIFICATE OF COMPLIANCE

**This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.**

**TAXES:** Pursuant to 32 V.S.A. § 3113, bidder hereby certifies, under the pains and penalties of perjury, that the company/individual is 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 as of the date this statement is made. A person is in good standing if no taxes are due, if the liability for any tax that may be due is on appeal, or if the person is in compliance with a payment plan approved by the Commissioner of Taxes.

**INSURANCE:** Bidder certifies that the company/individual is in compliance with, or is prepared to comply with, the insurance requirements as detailed in Section 7 of Attachment C: Standard State Contract Provisions. Certificates of insurance must be provided prior to issuance of a contract and/or purchase order. If the certificate(s) of insurance is/are not received by the Office of Purchasing & Contracting within five (5) days of notification of award, the State of Vermont reserves the right to select another vendor. Please reference the RFP and/or RFQ # when submitting the certificate of insurance.

**CONTRACT TERMS:** The undersigned hereby acknowledges and agrees to Attachment C: Standard State Contract Provisions.

**TERMS OF SALE:** The undersigned agrees to furnish the products or services listed at the prices quoted. The Terms of Sales are Net 30 days from receipt of service or invoice, whichever is later. Percentage discounts may be offered for prompt payments of invoices, however such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

**Form of Payment:** Would you accept the Visa Purchasing Card as a form of payment?  
 Yes  No

**Worker Classification Compliance Requirement:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

**Self-Reporting.** Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

**Subcontractor Reporting.** Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will 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), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

Insurance Certificate(s): Attached \_\_, OR will provide upon notification of award \_\_\_\_.

Quotation Valid for: \_\_\_\_ days

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

Name of Company: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_ Fax Number: \_\_\_\_\_

\_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_ Name: \_\_\_\_\_  
Signature (Bid Not Valid Unless Signed) (Type of Print)

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

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

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

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

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

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

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

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

participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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

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

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

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

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

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

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

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

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

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

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

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

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

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

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

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

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

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

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

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

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

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

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

**A.** Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

**B.** Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

**C.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

**D.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

**A. is not under any obligation to pay child support; or**

**B. is under such an obligation and is in good standing with respect to that obligation; or**

**C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.**

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

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

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

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 (“False Claims Act”); Section 11 (“Whistleblower Protections”); Section 14 (“Fair Employment Practices and Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 23 (“Certification Regarding Use of State Funds”); Section 31 (“State Facilities”); and Section 32 (“Location of State Data”).

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

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

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

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

**23. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.

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

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

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

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

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

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

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

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

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

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

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

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

(End of Standard Provisions)