

# VERMONT DEPARTMENT OF PUBLIC SERVICE

## REQUEST FOR PROPOSALS

CI 2018-01

Extension of Broadband Service to the Underserved Locations throughout Vermont

### REQUEST FOR PROPOSAL OVERVIEW

This request for proposal (“RFP”) is issued by the Vermont Department of Public Service (“Department”). The RFP invites sealed bids from broadband *Internet Service Providers* (hereinafter “Respondents”) to extend broadband service to “underserved” locations throughout Vermont, as defined in 30 V.S.A. § 7515b(a). The successful Respondents will submit bids to serve designated underserved locations with broadband service at speeds of at least 10 megabits per second (Mbps) download and 1 Mbps upload (“10/1 Mbps”). Awards will be made as grants reimbursing the Respondent for actual expenses incurred.

**Background:** The Department is an agency within the executive branch of Vermont state government, and is charged with representing the public interest in energy, telecommunications, water, and wastewater utility matters. The Department is responsible for “solicit[ing] proposals from service providers . . . to deploy broadband”<sup>1</sup> to eligible locations throughout Vermont. These designated locations are eligible for funding through the Vermont Universal Service Fund’s Connectivity Fund. In conjunction with this RFP, the Department is publishing a list of locations eligible to receive support from the Connectivity Fund. There is \$220,000 available in funding for this round of grants.

**RFP Overview:** The Department seeks proposals from broadband service providers to provision broadband Internet service to underserved locations on the Department’s list of eligible locations. The Department has identified each underserved location by street address and its E-911 site ID number. Respondents will be responsible for constructing, leasing, or purchasing facilities

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<sup>1</sup> See 30 V.S.A. § 7515b(b).

necessary to provision service to every underserved residential and business location proposed to be served by Respondent. The Respondent will then be required to offer broadband service at speeds of at least 10/1 Mbps at each location identified in the grant award. Respondents are required to offer, either directly or through an affiliate, retail service to those locations. The Department anticipates selecting more than one proposal, but selection will be dependent on available funding and the quantity and quality of submissions.

**Eligible Locations:** The Department of Public Service is authorized by law to publish annually a list of census blocks eligible for Connectivity funding based on the Department’s mapping data.<sup>2</sup> The Department has released a list of eligible census blocks, which include 16,909 locations statewide. All locations included in this round of funding are considered “conditionally eligible.” A Conditionally Eligible Location is any location that has not been verified to be served or unserved at 4/1 Mbps or may be eligible for service through another federal or state funded program. Prior to issuing an award, the Department may verify that locations included in received proposals are, in fact, not served at 4/1 Mbps. More information on the Connectivity Initiative, including a map of locations eligible can be found by visiting the Department’s website at <http://publicservice.vermont.gov/>

**Satellite Service:** Satellite service providers interested in responding are encouraged to review 30 V.S.A. § 7515b(a), which defines an “unserved location” as one being served exclusively by satellite or dial-up service.

## RFP PROCESS

**Work to be Performed:** The Department, through this RFP, intends to extend broadband service to locations identified in the Department’s current list of eligible addresses. To that end, the Department seeks proposals to serve every identified underserved location in eligible areas. The Respondent will be required to take whatever steps are necessary, including constructing, leasing, or purchasing facilities, to serve these locations with broadband Internet access at speeds of at least 10/1 Mbps. Respondents will be required to extend retail broadband service to those locations within one (1) year of entering into an agreement with the Department and will be obligated to serve those locations with retail broadband service for a term of at least five (5) years.

Respondents shall be subject to transparency and reporting requirements including, but not limited to, reporting, tracking, and documentation of incurred costs, and access to records.

**Communication Regarding this RFP:** Department staff will not communicate directly with Respondents about the substance of the work to be performed, but will answer procedural questions about the RFP. All Communications concerning this Request for Proposal (RFP) should be sent by email to [psd.telecom@vermont.gov](mailto:psd.telecom@vermont.gov) or to the following mailing address:

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<sup>2</sup> Id.

Connectivity Initiative  
Department of Public Service  
112 State Street, Floor 3  
Montpelier, Vermont 05602

Potential Respondents who have questions concerning the substance of the RFP should follow the RFP Timetable below. All submitted questions will be distributed, along with answers from the Department, to all who have submitted a letter of intent to the Department.

The Department reserves the right to revise any part of this RFP at any time prior to the deadline for submission. The Department will post any changes to its website. It is the obligation of Respondents to check the Department's website for updates and changes.

**Notice of Intent to Respond:** Respondents should notify the Department of their intent to respond to this RFP by sending an email with a subject of "Intent to Respond: RFP – CI 2018-01" by January 4<sup>th</sup>, 2019 at 4:30 p.m. to [psd.telecom@vermont.gov](mailto:psd.telecom@vermont.gov) or by letter to the address above. Failure to notify the Department does not disqualify a respondent from bidding, but will mean said respondent will not directly receive updates or notices from the Department regarding the RFP.

**RFP Timetable:** The RFP process will adhere to the following schedule:

December 7, 2018	Request for Proposals issued
January 4, 2019	Notice of intent due to the Department by 4:30 p.m.
January 11, 2019	Questions (if any) due in writing from Respondents
January 18, 2019	Written answers to Respondents' questions distributed to all Respondents who have filed letters of intent
January 25, 2019	Proposals due from Respondents by 4:30 p.m.
February 1, 2019	Proposal recommendation submitted to Connectivity Advisory Board <sup>3</sup>
February 8, 2019	Notice of Award and Department to begin negotiation with selected Respondent(s)

**Proposal Pricing:** Respondents must be able to provide a total, "not-to-exceed," turn-key, price for the project. Estimated costs will not be accepted. The Department may, at its discretion, review proposals under a cost per location basis. Price estimates will not be accepted.

**Proposal Submission:** To be considered, proposals must be received by DPS on or before 4:30 p.m. on January 25, 2019. Proposals should be sent via email to [psd.telecom@vermont.gov](mailto:psd.telecom@vermont.gov) in either PDF or Microsoft Word Format. Alternatively, Respondents may submit one original and one hard-copy proposal package, either by certified mail or hand delivery, to:

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<sup>3</sup> Date subject to scheduling of a Telecommunications & Connectivity Advisory Board meeting.

Connectivity Initiative  
Department of Public Service  
112 State Street, Floor 3  
Montpelier, VT 05062

No proposals will be accepted after the deadline. Bidders mailing their proposals should allow sufficient mail delivery time to ensure receipt of their proposal(s) by the time specified. It is the responsibility of the Respondent to assure delivery of proposal(s) on or before the due date and time.

**Term of Agreement:** Any agreement resulting from this RFP will be for a term of six (6) years to commence on the execution of an agreement between the Respondent and Department. Respondent shall not commence work on its proposed project until an agreement is in place.

**Oral Presentations/Site Visits:** Respondents may be asked to make oral presentations or to make their facilities available for a site inspection by the Department. Any clarifications to a bid response resulting from these sessions will be in writing and will be incorporated in the bid response.

## ELEMENTS OF PROPOSAL

In response to this RFP, each bidder is required to submit a proposal organized into five clearly identified sections:

1. Transmittal letter
2. Certification
3. Index
4. Elements of Proposal
  - A. General Information
  - B. Project Description
  - C. Price proposal
5. Attachments (if applicable)

**Respondent Certifications:** Respondents shall certify the following:

1. Each person signing a proposal certifies that he or she is the person in the Respondent's organization responsible for, or authorized to make, decisions as to the prices quoted and that he or she has not participated, and will not participate, in any action contrary to the non-collusion requirements of this RFP.
2. Personnel: Respondents shall not knowingly engage on a full-time, part-time, or other basis (except on a volunteer basis) during the period of each contract or agreement, with any individual involved in the preparation of this RFP, or the selection and/or award of any contract or agreement.

**General Information:** The elements of Respondents' proposals should be presented in the same order as shown in these sections.

*1. Responding Company*

If a Respondent is owned or controlled by a parent company, the name, main office address, and parent company's tax identification number shall be provided in the proposal. If a Respondent company is independently owned, the name, main office address, and tax identification number of the bidding company shall be provided in the proposal(s).

*2. Broadband Service History*

Respondent shall indicate experience provisioning broadband Internet to residential and business customers. Respondent should be able to demonstrate a history of deploying broadband technologies in rural or other hard to serve areas.

*3. Subcontractors*

Planned use of subcontractors shall be clearly explained in the proposal(s), including terms of any subcontract. Respondents must include a copy of any proposed subcontract(s) with the proposal(s), if available. All subcontracts must comply with the certification requirements in Section III. The prime contractor(s) shall be responsible for all contract performance, whether or not subcontractors are used. The only contact with the DPS will be with the Respondent.

*4. Contract Management*

Respondents shall state how the contract(s) or agreement(s) will be managed to assure compliance and the satisfaction of the Department. Responsible individuals should be identified by name, title, and description of function.

*5. Non-Collusion*

Respondents shall affirm that each proposed bid price has been arrived at independently without collusion, consultation, or communication with any other bidder or with any competitor; the said bid price was not disclosed by the Respondent and was not knowingly discussed prior to submission, directly or indirectly, with any other Respondent or with any competitor; and no attempt was made by the Respondent to induce any other person, partnership, or corporation to submit or withhold a proposal for restricting competition.

*6. Financial History*

To allow the Department to evaluate the financial responsibility of responding entities, the following items shall be submitted with each proposal for the Respondent and its parent organization (if applicable):

- a. Audited Financial Statement or 10K Report for the most recent two (2) years, if available, including at a minimum:
  - i. Statement of income and related earnings
  - ii. Cash flow statement
  - iii. Balance sheet
- b. Opinion concerning financial statements from a CPA
- c. Primary banking source letter of reference.

This financial information also is required of any subcontractor that is expected to receive more than ten (10) percent of the value of each award.

**Project Description:** The Project description must contain the following information:

1. Each proposal should identify the eligible locations that the provider intends to serve. Respondent should include plans to cover every location identified in the proposal;
2. Each proposal should define the type of technology that will be deployed. The proposal should describe the design architecture of the system, specifically the equipment involved in the proposed system and its advantages over competitor alternatives. Respondents should provide a high-level network architecture that identifies key system components;
3. Each proposal should list all retail prices for service and include all tiers of service. Prices should include additional fees (such as data overage charges, and equipment rentals) that could be assessed against consumer accounts;
4. Each proposal should describe what, if any, customer premises equipment (“CPE”) will need to be installed, the cost of CPE, and who will bear the cost of installing the CPE;
5. Each proposal should describe what, if any, additional services will be offered using the facilities deployed through the proposed project (e.g. voice, video, etc.);
6. The minimum and maximum data transfer rates of the broadband service;
7. The number of locations already served with broadband speed of at least 4/1 Mbps to be served by the project;
8. A copy of the terms and conditions that will govern Respondent’s retail broadband Internet service. The terms and conditions should include time frames for setting up service once it is ordered and repair and/or restoration of service in the event of an outage;
9. Any information the applicant deems relevant to demonstrate the technical, financial, and economic feasibility of the project.

**Project Price:** The proposal should clearly state a total, firm price. Price estimates will not be accepted. If Respondent is willing to accept partial awards for serving individual locations, the Respondent should provide a price for individual locations. Respondents must also state the intent to make capital investment in facilities.

## **PERFORMANCE**

The Respondent will be obligated to take whatever steps are necessary, including constructing, leasing, or purchasing facilities, to extend service to every location identified in the grant agreement.

Within at least one year from entering into an agreement with the Department, the service provider must perform the following:

1. Offer broadband Internet access service with speeds of least 10/1 Mbps. The Respondent may also offer Broadband service at lower tiers of service, but consumers must be able to purchase broadband service at speeds of at least 10/1 Mbps. Speed guarantees are subject to verification by the Department once service is offered.

2. Offer service to the identified locations at the same rates and terms and conditions offered to Respondent's existing customers.
3. Offer retail broadband service to every eligible location identified in the award for a period of at least five (5) years from the date service is offered to eligible locations.
4. File progress reports. Reporting will include quarterly progress during the construction/installation phase of the project and annually thereafter. Quarterly reports and the final project report will include expenditures and also specific activities.

## PROPOSAL REVIEW AND SELECTION

**Review Criteria:** Proposals will be reviewed by Department staff. Selection of the winning proposal(s) will be made based on the sole opinion of the Department that the proposal(s) submitted are in the public good of the State. The Department is required by 30 V.S.A. § 7515b to "give priority to proposals that reflect the lowest cost of providing services to identified locations." However, the Department is also required to consider the following:

- (1) The proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;
- (2) The price to consumers of services;
- (3) The proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;
- (4) Whether the proposal would use the best available technology that is economically feasible;
- (5) The availability of service of comparable quality and speed;
- (6) The objectives of the state's Telecommunications Plan.<sup>4</sup>

The Department reserves the right to make a selection without further discussion of proposals received. Therefore, it is important that each proposal be submitted in the most complete and accurate manner possible.

**Partnerships:** The primary consideration under statute is cost per address. Therefore, in an effort to maximize effectiveness of this RFP, the Department will favorably consider proposals that utilize alternative funds as a match. Such matching funds can include private, local, state, or federal funding sources. Respondents shall itemize its own contribution and that of third parties in its proposal.

**Rejection of Proposal:** The Department reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received, and to accept any portion of a

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<sup>4</sup> See 30 V.S.A. § 7515b. The Vermont Telecommunications Plan can be accessed by visiting [http://publicservice.vermont.gov/publications-resources/publications/telecom\\_plan](http://publicservice.vermont.gov/publications-resources/publications/telecom_plan)

proposal if deemed in the best interest of the State and in accordance with the applicable provisions of law.

**Negotiations with Respondents:** Upon completion of the evaluation process, the Department may select one or more Respondents with which to simultaneously negotiate grant agreements, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is in the best interest of the State of Vermont. In the event the Department is successful in negotiating with one or more of the Respondents, the Department will issue a notice of award. In the event the Department is not successful in negotiating a grant agreement with a selected contractor, the Department reserves the option of negotiating with another Respondent or choosing not to issue an award.

**Connectivity Advisory Board Recommendation:** Prior to issuing a final award, the Department will seek advice from the Telecommunications & Connectivity Advisory Board on the proposals received by the Department in accordance with the Advisory Board's duties under 30 V.S.A. § 202f (g).

**Grant Award:** The basis for the selection of the winning respondent(s) will be made based on the sole opinion of the Department that the proposal(s) submitted will be in the best interest of the State and in accordance with Vermont law.

## TERMS AND CONDITIONS

**Binding Offer:** A proposal submitted in response to this RFP shall constitute a binding offer, until approval by the Department of a finalized agreement. Acknowledgment of this condition shall be indicated by the signature in the Transmittal Letter of the bidder or an officer of the bidder legally authorized to execute contractual obligations.

**Limited Liability:** The Department assumes no liability in any fashion with respect to this RFP or any matters related thereto. All prospective service providers and their assigns or successors, by their participation in the RFP process, shall indemnify, save and hold the Department and its employees and agents free and harmless from all suits, causes of action, debts, rights, judgments, claims, demands, accounts, damages, costs, losses and expenses of whatsoever kind in law or equity, known and unknown, foreseen and unforeseen, arising from or out of this RFP and/or any subsequent acts related thereto, including but not limited to the notification of a service provider to the PSB and any action brought by an unsuccessful prospective service provider.

**Agreement Cancellation:** The Department reserves the right to cancel any agreements resulting from this RFP, for cause, as will be defined in the Terms and Conditions of the final agreement.

**Agreement Modification:** It is possible that Federal Communications Commission (FCC) decisions; administrative, judicial or legislative decisions; or changes in technology or market conditions may make it necessary or desirable to modify the contract. Procedures for modification will be defined in the agreement document.



**Venue:** The laws of the State of Vermont shall govern in connection with this RFP and the formation, performance, and the legal enforcement of any resulting contract or agreement.

**Proposal Ownership:** All deliverables submitted as a response to this RFP become the property of the Department and the State of Vermont. All submitted responses may be reviewed by any person after the grant agreement has been signed. The Department reserves the right to use any or all information/material presented in reply to this RFP, including the right to destroy any information at the discretion of the Department. Disqualification of a bidder does not eliminate this right.

**Warranty:** As a condition of delivery of the grant funds, Respondent warrants to the Department that:

- (i) the facts and estimates provided in its response to the Connectivity Initiative request for proposal are, to the best of Respondent's knowledge, correct and true;
- (ii) grant funds are economically necessary to fulfill Respondent's proposal, build, or produce the grant project, and operate the required services to the locations listed in Respondent's proposal, and;
- (iii) Respondent does not already provide service of at least 4/1 Mbps to the locations listed in the Respondent's proposal.

**Secondary Public Funding Resources:** Respondent shall attest that it has not received support from any additional federal or state program for any of the locations awarded to Respondent under this round of grant funding. Furthermore, Respondent shall attest that it won't seek additional federal or state support for any of the locations awarded to Respondent under this round of support for the duration of this grant award. Respondents may only apply secondary public funding sources to awarded locations with prior written approval from the Department. The Department reserves the right to withdraw or reclaim funding for any location found to be counted toward federal Universal Service obligations by the Respondent.

**News Releases:** News releases pertaining to this RFP, grant award, or the project shall not be made without prior written approval from the Department.

**Equal Opportunity:** Any respondent submitting a proposal shall be an Equal Opportunity Employer. During the duration of the performance of the grant agreement, the selected Respondent(s) will be expected to comply with all federal, state, and local laws respecting nondiscrimination in employment.

**Funding:** All Grant awards are subject to the availability of funding.

**Payment:** The Department (through the VUSF) will pay for actual work performed and expenses incurred under this project up to the specified grant amount. Payment will be made after the project is completed and the Department has received certification from the Respondent(s) that service is available and being offered to every location identified in the award, and the speed of service is at least 10/1 as independently verified through a speed test. Payment will be made within 30 days of receipt of the certification from Respondent.

**Other Terms and Conditions:** Respondent will be responsible for all other terms and conditions listed in the model Grant Agreement, Attachment C: Standard state Provisions for Contracts and Grants upon execution of a grant agreement.

**Attachments:** There are three attachments to this RFP: Attachments A, B, and C.

## CERTIFICATE OF COMPLIANCE

**For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.**

- A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
  
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.
  
- C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?  
  
\_\_\_\_ Yes \_\_\_\_ No

- D. **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.

**E. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification**

**Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):**

1. Bidder owns, leases or utilizes, for business purposes, space that has received:

- Energy Star® Certification
  - LEED®, Green Globes®, or Living Buildings Challenge<sup>SM</sup> Certification
  - Other internationally recognized building certification:
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2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:

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3. Please Check all that apply:

- Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
  - Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
  - Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
  - Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? \_\_\_\_\_
  - Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
  - Bidder offers employees an option for a fossil fuel divestment retirement account.
  - Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:
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4. Please list any additional practices that promote clean energy and take action to address climate change:

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**F. Acknowledge receipt of the following Addenda:**

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Bidder Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

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

\_\_\_\_\_ Telephone: \_\_\_\_\_

\_\_\_\_\_ E-Mail: \_\_\_\_\_

By: \_\_\_\_\_ Name: \_\_\_\_\_  
Signature of Bidder (or Representative) (Type or Print)

**END OF CERTIFICATE OF COMPLIANCE**



**Attachment B: Offshore Outsourcing Questionnaire**

Vendors must indicate whether or not any services are or will be outsourced under the terms of any agreement with the State of Vermont. Indicate N/A if not applicable. This is required by the State of Vermont but cannot be used as an evaluation criterion under Federal Law.

**Services:**

Proposed Service to be Outsourced	Bid Total or Contract Estimate	Represents what % of total Contract Dollars	Outsourced Dollars	Outsourced Work Location (Country)	Subcontractor

If any or all of the services are or will be outsourced offshore, Vendors are required to provide a cost estimate of what the cost would be to provide the same services onshore and/or in Vermont.

Proposed Service to be Outsourced	Bid Total or Contract Estimate if provided Onshore	Bid Total or Contract Estimate if provided in Vermont	Cost Impact	Onshore Work Location	Subcontractor

\_\_\_\_\_  
Name of Bidder:

\_\_\_\_\_  
Signature of Bidder:

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

**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)