

# VERMONT DEPARTMENT OF PUBLIC

## SERVICE GRANT APPLICATION

### INSTRUCTIONS

#### Broadband Innovation Grant, Round 3

**This grant provides funding for feasibility studies and business plans that seek to provide innovative broadband solutions for underserved locations throughout Vermont.**

#### REQUEST FOR PROPOSAL OVERVIEW

This grant opportunity is issued by the Vermont Department of Public Service (“Department”) and is the third of three rounds. In this round, the Department invites applications from communications union districts and other units of government, regional planning commissions, nonprofit organizations, cooperatives, and for-profit businesses (hereinafter “Applicants”) to conduct Feasibility Studies and to create Business Plans related to the deployment of broadband in rural unserved and underserved areas of Vermont. The successful Applicants will submit bids to perform feasibility studies and produce actionable business plans for potential broadband solutions. Business Plans shall include high-level engineering and design plans, financing models, estimated construction costs, and ideal operational models. Business Plans are only required for Feasibility Studies that return a positive finding. A single grant award may not exceed \$60,000. Funding is available for up to eight Applicants to receive full-price awards in this third funding round.

In the interest of Applicants who are ready to proceed now, the Department will select up to three Applicants after the April 24<sup>th</sup> early deadline. All remaining funds will be awarded after the second deadline on May 29<sup>th</sup>.

This funding round includes support provided by the Agency of Commerce and Community Development through the ThinkVermont! Initiative. This funding of \$45,000 dollars will be combined with the Department’s existing BIG budget to strengthen the total number of applicants that the Department can support. This funding is reserved for municipalities and is described in more detail below.

**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 administering the Broadband Innovation Grant Program. The purpose of the Program is to evaluate innovative solutions that provide broadband to rural unserved and underserved areas of Vermont. The program was established by Act 79 of the 2019 Vermont General Assembly.

**Eligible Applicants:** The Department seeks proposals from communications union districts and other units of government, nonprofit organizations, cooperatives, regional planning commissions, and for-profit businesses conduct feasibility studies related to the deployment of broadband in rural unserved and underserved areas of Vermont. The following conditions apply to the Program:

- 1) In awarding grants, the Commissioner shall give preference to feasibility studies that contemplate the provision of broadband service that is symmetrical.
- 2) Eligible grant Applicants must be one of the following:
  - communications union district (“CUD”) or other unit of government
  - nonprofit organization
  - cooperative
  - regional planning commissions
  - for-profit business
- 3) A grant award may not exceed \$60,000.00

**Eligible Locations:** Applicants shall identify a proposed service territory and Department staff will lend preference to those that include unserved and underserved locations in the proposed boundary. The Department of Public Service publishes maps that indicate the level at which counties and towns are served. Maps and tables including pertinent geographic and service data are available on the Department’s website<sup>1</sup>.

**ThinkVermont! Support:** In this grant round the Agency of Commerce and Community Development (“ACCD”) is contributing \$45,000 in additional support through the ThinkVermont Initiative. This support was appropriated in Act 79 and is available to municipal applicants. Applicants are not required to do anything additional beyond identifying themselves as a municipal entity and including an expression of willingness to accept support through ThinkVermont. ACCD and the Department will work together to select an eligible applicant for this support. Applicants awarded support through ThinkVermont will execute a single grant agreement with both the Department of Public Service and ACCD. Applicants seeking to take advantage of the ThinkVermont support are still eligible for the full grant amount and would otherwise be bound by the same contractual terms described within this RFP.

## **GRANT OPPORTUNITY PROCESS**

**Activity Supported Under this Grant:** The Department, through this grant opportunity, intends to review proposals from entities seeking to determine the viability of different innovative strategies for enabling broadband deployment in rural unserved and underserved areas of Vermont. Feasibility studies with positive findings will be followed up by a business plan that outlines how the grantee’s chosen proposal can be accomplished. Grants will be structured to

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<sup>1</sup> <http://publicservice.vermont.gov/>

provide 50% of the requested amount upon submission of a credible feasibility study, regardless of the finding. Reimbursement is subject to Applicant's evidence of actual costs and itemized invoices provided to the Department.

If, after submission of a finding that a proposed project is feasible, Applicant shall seek permission to proceed to the second phase of the project- the production of an actionable business plan. For the purposes of this grant, a project will be considered feasible if the report's findings show that the project will be cash-flow positive within three years of the receipt of required initial investment, considering projected income and project-related capital and operating expenses.

Feasibility Study: The Department seeks proposals to collect vital information including, but not limited to:

- Survey-informed estimated "take rates" for new service (i.e., the percentage of potential subscribers who are offered service that choose to subscribe)
- Inventory of vertical assets (Where are useable poles? What is already attached?)
- Analysis of alternative deployment routes
- The presence or lack of commercial areas such as town centers, retail locations, manufacturing facilities, clinics, and whether they are adequately served.
- Bandwidth needs
- A proposed project service area
- A basic technical design with sufficient detail to enable rough cost projections
- Pro forma financial projections for the project for at least three years
- Current and previous three years' financials of proposed operating entity
- An opinion from a reputable unrelated third party such as a lending institution concurring with a finding of feasibility.
- An enumeration of project risks

Business Plan: Upon completion of the Feasibility Study, phase II requires the grantee to produce an actionable business plan for a potential broadband solution (with speeds at a minimum of 25/3 Mbps), which may include formation of or partnership with a cooperative, communications union district, rural economic development infrastructure district, municipal communications plant, or utility. For the purposes of this grant, an actionable business plan is a document that a financial institution would find sufficient basis on which to provide financial support. The business plan shall include, but is not limited to:

- High level Engineering and design plans
- Market Analysis
- Financing models, pro forma financial projections
- Estimated construction costs
- Ideal operational models
- Risk Management Plan accounting for all risks identified in Feasibility Study

Applicants shall be subject to transparency and reporting requirements including, but not limited to, reporting, tracking, and documentation of incurred costs, and access to records. Work performed under this grant shall become the property of the State of Vermont and the Department of Public Service.

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

Broadband Innovation Grant  
Department of Public Service  
112 State Street, Floor 3  
Montpelier, Vermont 05602

Potential Applicants who have questions concerning the substance of the grant opportunity should follow the grant opportunity 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 grant opportunity at any time prior to the deadline for submission. The Department will post any changes to its website. It is the obligation of Applicants to check the Department's website for updates and changes.

**Notice of Intent to Respond:** Applicants should notify the Department of their intent to respond to this grant opportunity by sending an email with a subject of "Intent to Respond: "BIG 2019-03" by April 9<sup>th</sup>, 2020 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 an Applicant from bidding but will mean said Applicant will not directly receive updates or notices from the Department regarding the Grant Opportunity.

**Grant Opportunity Timetable:** The grant opportunity will adhere to the following schedule:

March 9, 2020	Request for Proposals issued
April 9, 2020	Notice of intent due to the Department by 4:30 p.m.
April 14, 2020	Questions (if any) from applicants due in writing by 4:30pm
April 16, 2020	Written answers to Applicants' questions distributed to all Applicants who have filed letters of intent.
April 24, 2020	Early Decision Deadline- up to three early applicants will be awarded. Proposals must be received by 4:30pm.
May 7, 2020	Notice of Award for Early Applicants. Department to begin negotiations with selected Applicants.
May 29, 2020	Regular Applications Deadline – All remaining funds will be awarded. Proposals must be received by 4:30pm
June 12, 2020	Notice of Award and Department to begin negotiation with selected Applicants

**Proposal Submission:** To be considered, proposals must be received by DPS on or before 4:30 p.m. on May 29, 2020. Proposals should be sent via email to [psd.telecom@vermont.gov](mailto:psd.telecom@vermont.gov) in either PDF or Microsoft Word Format. Alternatively, Applicants may submit one original and one hard-copy proposal package, either by certified mail or hand delivery, to:

Broadband Innovation  
Grant 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 Applicant to assure delivery of proposal(s) on or before the due date and time.

**Term of Agreement:** Any agreement resulting from this grant opportunity will be for a term of seven (7) months. Studies funded through the Program shall conclude within six (6) months of receipt of the award. This time does not include periods where Applicants await Department notice to proceed, such as notifying the Department of a selected subcontractor, or while waiting for Department approval to produce a business plan. Grant recipients shall report their findings and recommendations to the Commissioner of Public Service within thirty (30) days following the completion of a study funded under the Program. Applicant shall not commence work on its proposed project until an agreement is in place.

## **ELEMENTS OF PROPOSAL**

In response to this grant opportunity, 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)

**Applicant Certifications:** Applicants shall certify the following:

1. Each person signing a proposal certifies that he or she is the person in the Applicant'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 grant opportunity.
2. Personnel: Applicants 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 grant opportunity, or the selection and/or award of any contract or agreement.

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

### *1. Responding Company*

If an Applicant 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 an Applicant company is independently owned, the name, main office address, and tax identification number of the bidding company shall be provided in the proposal(s). Applicant shall not be an unaffiliated entity.

## *2. Prior Efforts to Improve Broadband Service*

Applicant shall indicate all prior attempts as an entity to improve broadband connectivity in the proposed service area. This may include, but is not limited to, prior feasibility studies, business plans, surveys, hearings, press coverage, infrastructure plans, offers made to ISP's requesting service extension, public hearings, or formation of official and regularly- meeting committees.

Applicants shall describe any prior or existing agreements, obligations, or formal arrangements with third parties such broadband providers, communications union districts, network operators, municipalities, etc.

## *3. Subcontractors*

Planned use of subcontractors shall be clearly explained in the proposal(s), including terms of any subcontract. Applicants must include a copy of any proposed subcontract(s) with the proposal(s), if available. All subcontracts must comply with the certification requirements imposed by the state. 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 Applicant.

If Applicant plans to employ a competitive bid process to select a subcontractor, the Department must have advanced notice of selected contractor and shall provide a notice to proceed before work commences.

## *4. Contract Management*

Applicants 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.

## *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 Applicant 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 locations that the Applicant intends to study.

2. Each proposal should provide a summary of the broadband connectivity status in the intended location. Information about broadband availability by location and speed is available on the Department's website<sup>2</sup>.
3. Each proposal should define the type(s) of technology to be evaluated for deployment.
4. Each proposal should provide a preliminary analysis of barriers and limitations that have contributed to the current connectivity gaps in the study area.
5. Each proposal should list all retail prices and service tiers for available broadband in the study area. Proposals should also include any small-business, enterprise, or industry-scale offerings. This need not include data-capped services such as satellite broadband.
6. Each proposal shall identify potential partner entities that will be evaluated as alternatives. Studies are not limited to evaluating partners included in the proposal.
7. Each proposal shall identify potential funding sources. Studies are not limited to evaluating funding sources included in the proposal. Any information the Applicant deems relevant to demonstrate their technical capacity to complete a feasibility study and business plan.
8. Status of any arrangements the Applicant has made with existing providers.

**Project Price:** A grant award may not exceed \$60,000.

## PERFORMANCE

Successful Applicants will be obligated to perform the following:

1. Grantees shall produce a Feasibility Study that contemplates the provision of broadband in a defined service area. Strategies to achieve the provision of broadband to the selected study area may include formation of or partnership with a cooperative, communications union district, rural economic development infrastructure district, for-profit business, municipal communications plant, or non-electrical utility<sup>3</sup>.
2. Upon submission of a Feasibility Study that returns a positive finding of feasibility, the Department will require the Grantee to produce an actionable Business Plan capable of assisting the grantee in solicitation of future financial support in pursuit of broadband provision.
3. The business plan required by this subdivision shall include high-level engineering and design plans, financing models, estimated construction costs, and ideal operational models.
4. Not more than 2.5 percent of a grant may be used for grant management.
5. Studies funded through the Program shall conclude within six months of receipt of the award, notwithstanding time spent awaiting Department review or notice to proceed.
6. The Commissioner shall retain 50 percent of the grant award until he or she determines that the Feasibility Study has been completed consistent with the terms of the grant.
7. Grant recipients shall report their findings and recommendations to the Commissioner of Public Service within 30 days following the completion of a study funded under the Program.

## PROPOSAL REVIEW AND SELECTION

**Review Criteria:** Proposals will be reviewed by Department staff. The Department is required

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<sup>2</sup> <https://publicservice.vermont.gov/content/broadband-availability>

<sup>3</sup> Studies from Electric Distribution Utilities were solicited in the previous funding round.

by Act 79<sup>4</sup> to give preference to studies that contemplate the provision of broadband that is symmetrical (equal download/upload speed). The Department will also lend preference to Applicants who will utilize matching funds to complete the study and plan.

The Department will consider the completeness and clarity of the project description, as well as the presence and quantity of underserved and unserved locations in the proposed boundary. Letters of support and other evidence of strong community support will also be considered. 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 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:** In an effort to maximize effectiveness of this grant opportunity, the Department will favorably consider proposals that utilize alternative funds as a match. Such matching funds can include in-kind, private, local, state, or federal funding sources. Applicants 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 proposal if deemed in the best interest of the State and in accordance with the applicable provisions of law.

**Negotiations with Applicants:** Upon completion of the evaluation process, the Department may select one or more Applicants 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 Applicants, 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 Applicant or choosing not to issue an award.

**Grant Award:** The basis for the selection of the winning Applicant(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 grant opportunity 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 grant opportunity or any matters related thereto. All prospective service providers and their assigns or

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<sup>4</sup> <https://legislature.vermont.gov/bill/status/2020/H.513>



successors, by their participation in the grant opportunity 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 grant opportunity and/or any subsequent acts related thereto, including but not limited to the notification of a service provider to the PUC and any action brought by an unsuccessful prospective service provider.

**Agreement Cancellation:** The Department reserves the right to cancel any agreements resulting from this grant opportunity, 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 grant opportunity and the formation, performance, and the legal enforcement of any resulting contract or agreement.

**Proposal Ownership:** All deliverables submitted as a response to this grant opportunity 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 grant opportunity, 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, Applicant warrants to the Department that:

(i) the facts and estimates provided in its response to the Broadband Innovation Grant request for proposal are, to the best of Applicant's knowledge, correct and true;

**Equal Opportunity:** Any Applicant submitting a proposal shall be an Equal Opportunity Employer. During the duration of the performance of the grant agreement, the selected Applicant(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 a one-time transfer from the General Fund to the Connectivity Fund) will pay for actual work performed and expenses incurred under this project up to the specified grant amount. The Commissioner shall retain 50 percent of the grant until he or she determines that the Feasibility Study has been completed consistent with the terms of the grant.

**Other Terms and Conditions:** Applicant 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 is one attachment to this grant opportunity: Attachment C. Please review the attachment in its entirety before applying.

**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)