



**REQUEST FOR PROPOSAL**  
**For**  
**Broadband Scoping Study for Non-CUD Vermont Towns**

Issue Date: May 11, 2022

Response Due Date: June 27, 2022

Department Contact: Rob Fish, Deputy Director  
Vermont Community Broadband Board  
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## **Vermont Community Broadband Board REQUEST FOR PROPOSALS**

The Vermont Community Broadband Board (VCCB or Board) provides funding, oversight, and support for the State of Vermont in its efforts to get every address connected to high-speed Broadband. As defined in [Act 71](#), passed by the legislature and signed into law on June 8, 2021, Communication Union Districts (CUDs) have been established to construct and operate fiber optic networks to carry out Broadband goals.

The State's strategy for broadband deployment focuses on public entities called CUDs. A CUD is an organization of two or more towns that join together as a municipal entity to build communication infrastructure together. 207 Vermont towns are actively involved in CUDs with over 404 volunteer board members and alternates supporting Vermont's effort to get everyone connected. Over 90 percent of the unserved and underserved addresses are covered by CUDs,

The purpose of this RFP is to identify a solution or solutions for towns that are currently not members of a CUD and not actively engaged with a provider to provide speed equal or great to 100/100 Mbps. The Vermont Community Broadband Board is requesting proposals for production of a scoping study to provide high level design, cost analysis, and recommendations related to broadband projects providing service of at least 100/100 Mbps that are a part of a Universal Service Plan in non-CUD towns and meet other criteria as specified in Act 71 as well as those criteria established by the Vermont Community Broadband Board.

**Proposals are due by 4:30 p.m., June 27, 2022**

## **Scope of Services**

The Consultant will work with the VCBB, and the Chittenden County Regional Planning Commission, and potentially neighboring Communication Union Districts to develop a Universal Service Plan, Financial Model, and, as a final outcome, a completed Act 71 Compliant Business Plan.

Elements of the scope include:

### **A.) Project Kickoff Meeting**

Meet remotely with State officials (VCBB Staff) and other stakeholders to develop a clear understanding of the project goals, objectives, timelines and deliverables as well as the elements of the Business Plan.

### **B.) Universal Service Plan**

In cooperation with the staff, the consultant will be responsible for identifying potential options for a proposed Universal Service Plan<sup>1</sup> for towns not currently represented by a Communications Union District nor with a plan in place. This includes the following towns: Colchester, Westford, Essex Junction, Essex Town, Williston, Jericho, Underhill, Shelburne, St. George, and Winooski: *Note: The WCVT portion of towns shared between Consolidated and WCVT and areas already served by fiber should not be examined.*

Universal Service Plans Options to Explore for each town and the area as a whole:

- 1) All addresses without a reliable wireless connection of at least 25/3 (see map - <https://experience.arcgis.com/experience/4a4f2662978b48238be5915ce9c7a68f/>)
- 2) All address currently underserved by a connection capable of 100/100 Mbps.

If the proposed plan covers more than one town or more than one service provider, and will likely be implemented in phases, the consultant shall make suggestions about how to break up the project into logical segments.

The VCBB has compiled substantial data on underserved premises, wire-centers, pole data (include underground/overhead), etc.

### **C.) Present a Financial Model**

Develop a preferred financial model which details revenue, expense, take rates, capital expenditures, interest and principal payments, and other key financial metrics of the project. Models evaluated should include a dark-fiber open-source model with one or more anchor tenants (alone or in conjunction with a neighboring Communications Union District), working with the established incumbent telephone company, and/or a public-private partnership with an ISP. Contractor should plan to engage with selected providers to inform the model. Before completing the business plans, the model should be reviewed by VCBB Staff.

### **D.) Develop an Act 71 Compliant Business Plan**

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<sup>1</sup> ACT 71 defines Universal service plan” as a plan for providing each unserved and underserved location in a communications union district or in a municipality that was not part of a communications union district prior to June 1, 2021 access to broadband service capable of speeds of at least 100 Mbps download and 100 Mbps upload.

Using the information developed, the Contractor shall provide VCBB staff with a draft Act 71 Compliant Business Plan. An Act 71 Compliant Business is a document that a financial institution would find sufficient information to provide financial support. The business plan shall include, but is not limited to: high-level engineering and design plans, market analysis, take-rate assumptions, and as relevant, cash flow positive date, loan payoff date, financing models, pro forma financial projections, estimated construction costs, ideal operational models, and an evaluation of risks including labor needs and availability, supply-chain contingencies for equipment and materials, make-ready work, and any other relevant capital and operational expenses. Additional information on this expectation can be found in the following document:

<https://publicservice.vermont.gov/sites/dps/files/documents/Additional%20Construction%20Grant%20Guidance%20Document.pdf>

## **Deliverables**

The final deliverable shall contain the following key elements as detailed in:

<https://publicservice.vermont.gov/sites/dps/files/documents/Additional%20Construction%20Grant%20Guidance%20Document.pdf>

- A.) Universal Service Plan
- B.) Financial Model
  - 1. Estimated capital expenditure for the project, including materials, labor, permitting, construction, design, engineering, and other capital expenses
  - 2. Estimated take rates based on a competitive analysis, pricing, product mix, and the resulting revenue by year for the project
  - 3. Gross costs, including connectivity, and operating expenses such as care, support, marketing, billing, and other recurring expenses
  - 4. Debt analysis, including interest expense, and debt assumptions
- C.) Preliminary design, including estimated ring and headend locations, and estimated distribution network locations

## **Schedule**

Respondent selected for this work must be able to begin work within 30 days upon awarding of the contract and be prepared to meet an agreed upon timeline for the completion of work.

## **Setting**

All work, including presentations to the Board, can be completed remotely.

## **Oversight**

The contract will be managed jointly by Rob Fish, Deputy Director. Other staff and Board resources will be available to provide guidance, contact information for individual Communications Union Districts, Regional Planning Commissions, and local providers.

## **Proposal Format**

All responses to this RFP must include the following information:

1. A technical proposal consisting of:
  - a. A cover letter expressing the firm's interest in working with the VCBB including

identification of the principal individuals that will provide the requested services.

- b. A description of the general approach to be taken toward completion of the project, an explanation of any variances to the proposed scope of work as outlined in the RFP, and any insights into the project gained as a result of developing the proposal.
  - c. A scope of work that includes detailed steps to be taken, including any products or deliverables resulting from each task.
  - d. A summary of estimated labor hours by task.
  - e. A proposed schedule that indicates project milestones and overall time for completion.
  - f. Demonstration of success on similar projects, including a brief project description and a contact name and address for reference.
  - g. A representative work sample like the type of work being requested.
  - h. A list of individuals that will be committed to this project and their professional qualifications. The names and qualifications of any sub-consultants shall be included in this list.
  - i. Identification of any conflicts of interest for the Respondent's representation of the VCBB and each of the parties named above in the Scope of Services.
  - j. Confirmation of the Respondent's acceptance of the General Terms and Conditions which are required by state law. This includes:
    - [State of Vermont - Federal Terms Supplement \(Non-Construction\) for all Contracts and Purchases of Products & Services connected with 2020 Pandemic](#) (04/08/2020)
    - [Attachment C - Standard State Provisions for Contracts and Grants](#) (12/15/2017 Revised).
2. A separate cost proposal consisting of a schedule by task of direct labor hours, direct labor cost per class of labor, overhead rate, and fee for the project. If the use of sub-consultants is proposed, a separate schedule must be provided for each.

## **Performance Measures**

All contracts with the State of Vermont are required to have some form of performance measures. In the contract resulting from this RFP, the Board expects that such measures will consist of (1) the timing related to the consultant's submittal of deliverables, (2) the timing related to the consultant's response to any Board requests for updates, and (3) the successful completion of the scope of work.

## **Requirements**

All proposals must be received no later than 4:30 p.m., June 27, 2022 in electronic format. Bids must consist of a single email with a single, digitally searchable PDF attachment containing all components of the bid. Multiple emails and/or multiple attachments will not be accepted. There is an attachment size limit of 40 MB. It is the Bidder's responsibility to compress the PDF file containing its bid if, necessary, in order to meet this size limitation. Electronic copies should be sent to [Robert.fish@vermont.gov](mailto:Robert.fish@vermont.gov). The Board reserves the right to accept or reject any or all bids. If a

respondent is selected, they will be invited to negotiate a contract.

### **Selection Criteria**

The Board will evaluate all proposals received based on the reasonableness of costs, completeness and quality of the proposal, qualifications of the individuals proposed to perform the work, relevance of previous experience, the proposed methodology for accomplishing the work, and any other criteria determined by the exercise of the Board's sole discretion.

The board reserves the right (but in no way is obligated) to interview the top prospective respondents to aid in the selection process.

### **Questions Concerning RFP**

Rob Fish

Phone: 802-522-2617

Email: Robert.fish@vermont.gov

### **General Terms and Conditions**

1. The consultants awarded this contract shall, upon notification of award, apply for registration with the Vermont Secretary of State's Office to do business in the State of Vermont, if not already so registered. Registration instructions may be found at: <https://www.sec.state.vt.us/corporationsbusiness-services/start-or-register-abusiness.aspx> or by contacting the Corporations Division at 128 State Street, Montpelier, VT 05633-1104 or by telephone at (802) 828-2386. The Department will not execute the contract until the consultants are registered with the Secretary of State's Office.
2. Respondents' technical proposals become public records and may become available for public review and inspection upon execution of a contract. The contents of the successful respondent's proposal, as accepted by the Board, may become part of the contract awarded as a result of this process. If any bidding party wishes to submit confidential information, all such information must be clearly designated and include an explanation for the designation.
3. The Board reserves the right to reject any and all proposals received as a result of this solicitation, to negotiate with any qualified source, to waive any formality and technicalities, or to cancel this RFP in part or in its entirety if it is in the best interests of the State.
4. The Board shall not be responsible for any costs incurred by any party in preparation of any proposal submitted in response to this RFP.
5. News releases pertaining to this RFP, contract award, or the project shall not be made without prior written approval from the Board.
6. All parties submitting proposals shall be Equal Opportunity Employers. During the duration of the performance of the contract, the consultants will be expected to comply with all federal, state, and local laws respecting non-discrimination in employment.
7. All proposals and deliverables become the property of the Board upon submission. Unselected proposals may be destroyed or returned to the bidder at the Board's discretion. This solicitation for proposals in no way obligates the Board to award a contract.
8. The Board assumes no liability in any fashion with respect to this RFP or any matters related thereto. All prospective consultants and their subcontractors or successors, by their participation in the RFP process, shall indemnify, save and hold the Board and its employees and agents free and

harmless from all lawsuits, causes of action, debts, rights, judgments, claims, demands, damages, losses and expenses or whatsoever kind of law or equity known or unknown, foreseen or unforeseen, arising from or out of this RFP and/or any subsequent acts related thereto, including but not limited to the recommendation of a consultant and any action brought by an unsuccessful respondent.

9. The selected respondent shall furnish any available information in their possession to the Board upon request, if relevant to the project.

10. The selected respondent will be required to enter into a standard Vermont State Contract, which will include all conditions included the standard "Attachment C" form, which is attached to this RFP.

11. Any contract resulting from this RFP must obtain the prior written approval of the Attorney General's Office, consistent with Agency of Administration Bulletin 17.10, and the requirements set forth at <https://ago.vermont.gov/contracts/>, including the required contract provisions. Final award of a contract will be contingent upon approval. Contracts for legal services must include the required provisions forth in "Legal Services D short" linked within the above webpage.

12. Any modifications to this RFP will be made in writing by the State through the issuance of an Addendum to this RFP and posted online. Modifications from any other source are not to be considered.

13. EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS: For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP. After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

## Attachments

- i. Standard Contract For Services Form, with Attachments C and D

## STANDARD CONTRACT FOR SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, \_\_\_\_\_ (hereinafter called "State"), and \_\_\_\_\_, with a principal place of business in \_\_\_\_\_, (hereinafter called "Contractor"). Contractor's form of business organization is \_\_\_\_\_. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is services generally on the subject of \_\_\_\_\_. Detailed services to be provided by Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$ \_\_\_\_\_.00.
4. **Contract Term.** The period of Contractor's performance shall \_\_\_\_\_, 20\_\_ and end begin on \_\_\_\_\_, 20\_\_ on \_\_\_\_\_.
5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.
8. **Attachments.** This contract consists of \_\_\_\_\_ pages including the following attachments which are incorporated herein: Attachment A - Statement of Work  
Attachment B - Payment Provisions  
Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)  
Attachment D - Federal Terms Supplement for all Contracts and Purchases of Products and Services Connected with 2020 Pandemic
9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:
  - (1) Standard Contract
  - (2) Attachment D
  - (3) Attachment C (Standard State Provisions for Contracts and Grants)
  - (4) Attachment A
  - (5) Attachment B



**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

By the State of Vermont:

By the Contractor:

**ATTACHMENT C: STANDARD STATE  
PROVISIONS FOR CONTRACTS AND  
GRANTS**

REVISED DECEMBER 15, 2017

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

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

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

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

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

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

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

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

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

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

or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

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

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

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

- Premises - Operations

- Products and Completed

- Operations Personal Injury

- Liability Contractual Liability

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

  - \$1,000,000 Each Occurrence

  - \$2,000,000 General Aggregate

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

  - \$1,000,000 Personal & Advertising Injury

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

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

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

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

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A.

§ 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction.

The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

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

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

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

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21

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

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

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

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

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

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

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

- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

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

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

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

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

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

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

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

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

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

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

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

**27. Termination:**

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

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

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

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

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

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

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

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

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

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

the Treadway Commission (COSO).

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

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

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

(End of Standard Provisions)

**Attachment D: STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT**  
**(Non-Construction) for all Contracts and**  
**Purchases**  
**of Products and Services Connected with 2020**

**Pandemic BYRD ANTI-LOBBYING AMENDMENT**

Contractors who apply or bid for an award of \$100,000 or more certify that each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the recipient who in turn will forward the certification(s) to the awarding agency

**PROCUREMENT OF RECOVERED MATERIALS**

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated Items unless the products cannot be acquired-

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

**CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
4. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
5. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
6. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland



Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

## **CONTRACTOR BREACH, ERRORS AND OMISSIONS**

1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.
2. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

## **TERMINATION FOR CONVENIENCE**

1. General
  - a. Any termination for convenience shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
  - b. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
  - c. No compensation will be allowed for items eliminated from the Contract.
  - d. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.

2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall immediately proceed to:

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
  - b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
  - c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
  - d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.
  - e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
  - f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.
3. Claim by Contractor

After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. Settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.