



# VERMONT

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## DEPARTMENT OF PUBLIC SERVICE

**REQUEST FOR PROPOSAL**  
For  
**Cost of Capital Expert Witness:**  
**Rate Filing of Vermont Gas Systems, Inc.**

**Issue Date:** March 2, 2023  
**Response Due Date:** March 10, 2023 at 4:30 PM

**Department Contact:** Erin Brennan  
Special Counsel  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620-2601  
Phone: (802) 522-6301  
Email: [Erin.Brennan@vermont.gov](mailto:Erin.Brennan@vermont.gov)

## VERMONT DEPARTMENT OF PUBLIC SERVICE REQUEST FOR PROPOSALS

### Cost of Capital Expert Witness

The Vermont Department of Public Service (“Department”), which represents the public interest in utility cases before the Vermont Public Utility Commission (“Commission”), is soliciting proposals, through this Request for Proposals (“RFP”), from qualified experts in utility finance to review and make recommendations on the appropriate cost of capital and capital structure of Vermont Gas Systems, Inc. (“Vermont Gas”), for use in a tariff and rate adjustment filing made by Vermont Gas with the Commission on February 15, 2023. The work primarily involves the provision of expert witness services to provide an independent assessment of the appropriate cost of Vermont Gas’s debt and equity and a determination of Vermont Gas’s appropriate capital structure

The work is anticipated to take place primarily from March through October, 2021. The contract period will begin when a contract is executed and end one year from that date.

**Proposals are due by 4:30 p.m., Friday, March 10, 2023**, with the goal of finalizing a contract as soon as practicable during March, 2023. The selected respondent should be available to start immediately thereafter. A signed original, one (1) hard copy, and one (1) electronic copy of the proposal must be delivered to the Department. Proposals and questions should be addressed to:

Erin Brennan  
Special Counsel  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620-2601  
Phone: (802) 522-6301  
[Erin.Brennan@vermont.gov](mailto:Erin.Brennan@vermont.gov)

### **Scope of Services**

The Department anticipates that the Respondent hired in connection with this RFP will support the legal, consumer affairs, and technical staff of the Department by providing expertise and technical assistance regarding cost-of-service ratemaking.

The selected Respondent is expected to provide assistance to the Department and participate in a contested administrative proceeding before the Commission, which has ultimate authority over whether to approve Vermont Gas’s proposed rates. The selected respondent’s preparation for and participation in the contested proceeding is expected to include preparing discovery questions and responses, drafting prefiled testimony to be submitted to the Commission, and offering live testimony to the Commission.

Respondent will review and provide an assessment of Vermont Gas's cost of capital and capital structure proposal. Respondent will also conduct an independent examination assessing and recommending an appropriate return on equity and capital structure for Vermont Gas's regulated operations under traditional regulation pursuant to traditional discounted cash flow, capital asset pricing model, and risk premium methodologies.

Respondent will be experienced in analyzing the cost of capital of regulated utility companies for the purpose of setting just and reasonable rates, and have knowledge of general and utility-specific finance principles and current developments. Respondent shall be qualified and prepared to prepare and render expert testimony, and be cross-examined, with respect to all of the issues addressed in this RFP, and which are likely to arise in a rate proceeding seeking cost recovery for the Project.

Respondent shall be qualified and prepared to prepare and render expert testimony, and be cross-examined, with respect to all of the issues addressed in this RFP.

### **Deliverables**

The final deliverables and work product of the respondent chosen through this RFP will consist of a written report (to be prepared in the form of written prefiled testimony), including supporting detail, covering the review and examination of Vermont Gas's proposed cost of capital to be used in setting just and reasonable rates. The review should document the scope of the consultant's review, and should specify areas of inquiry, responses, and resolution (if any). The report will be expected to include: include (1) a determination of the appropriate cost of debt to be used for setting rates for Vermont Gas; (2) a cost of equity study to estimate the cost of equity of Vermont Gas for use in setting rates; (3) a determination of the appropriate cost of capital to apply to rate base to provide Vermont Gas the opportunity to earn income sufficient to maintain its financial integrity and attract capital when efficiently managed; (4) an evaluation of Vermont Gas's bond rating/credit position; (5) a recommendation as to an appropriate fair value rate of return for application to the fair value rate base.

The following items will be required, as necessary, through the course of litigation:

1. Preliminary assessment of issues and preparation of a work plan within the schedule set by the Commission;
2. Discovery requests and evaluation of responses, including assistance with preparation for depositions if necessary;
3. Written testimony presenting a description of the review methods, materials reviewed, conclusions, and recommendations with supporting analysis;
4. Responses to discovery relating to the written testimony;
5. Cross-examination testimony and assistance with cross-examination of opposing witnesses;

6. Proposed findings of fact and other assistance with initial and reply briefs in support of the Department's case.

Respondent should be prepared to provide multiple electronic (original source applications and pdf) and hard copies of written products intended to be filed with the Department and the Commission. Respondent will be expected to be available for teleconferencing discussions with the Department and Vermont Gas. Respondent may be required to agree to maintain the confidentiality of specified information and documents.

### **Schedule**

Respondent selected for this work must be able to begin work upon award of the contract and to prepare for meeting the timelines established by the Commission in the anticipated proceeding. Vermont Gas made its filing on February 15, 2023. The the proceeding will run through October, 2023.

### **Setting**

Reviews and audits will take place in the context of contested administrative proceedings, through informal and formal discovery, and on-site review. Respondent will be expected to write and assist Department staff in preparation of written discovery requests and possibly deposition questions. In addition, the respondent will be expected to provide written testimony and exhibits presenting the results of their work, and to defend that work through testimony, discovery responses, depositions, and cross-examination. Respondent will be expected to testify remotely at evidentiary hearings, which will likely occur in August or September, 2023. Assistance with preparation of cross-examination, briefs, and proposed findings may also be required.

### **Oversight**

The contract will be managed by Erin Brennan, Special Counsel. Other Department personnel will be available for guidance and collaboration on related issues, proposed conclusions, policy formulation and articulation, and the drafting and filing of testimony.

### **Proposal Format**

All responses to this RFP must include the following information:

1. A brief description of the firm, which includes its history, organizational structure, and qualifications of relevant professional staff, including names and resumes with detailed qualifications and levels of competence of all individuals proposed to perform services. Subcontractors, if any, must be listed, including the firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning the subcontractor's organization and abilities.
2. A list with the names, phones numbers, and email addresses of personnel authorized

- to negotiate the proposed contract with the Department. All proposals must be signed by a duly authorized representative of the party (or parties) submitting the proposal.
3. A list of recent work performed, particularly including contracts with or appearances before utility regulatory agencies (if any), with a short narrative explaining the nature and extent of each such engagement. In the case of sworn testimony and depositions, please include a comprehensive list of all such proceedings, including docket numbers of any contested cases, as well as the name and telephone number of a reference person familiar with the respondent's work.
  4. A discussion of the respondent staff's expertise and experience relevant to the subject matter of this RFP.
  5. A description of all known or probable scheduling constraints or limitations on staff availability within the timeframe of the contract.
  6. Respondent selected will be compensated on a time and material basis. Please indicate the following:
    - a. Fees for staff time, showing the level of staff to be assigned, titles, hourly rates;
    - b. Travel expenses, including estimated transportation costs, lodging and subsistence, including all-in costs to attend meetings in Montpelier, Vermont; and
    - c. Description of all overhead and other costs that may be billed.
  7. A declaratory statement regarding respondent's past, current and anticipated relationships, obligations and commitments with any entity engaged in developing, constructing, operating, maintaining, and/or monitoring any utility facilities in Vermont, or with companies affiliated with Vermont Gas. If the consultant is involved in any way in any litigation, arbitration, mediation, or other dispute resolution process to which the State of Vermont is a party, please identify the matter (including docket number) and describe the involvement.

### **Evaluation Criteria**

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

### **Performance Measures**

Any contract with the State of Vermont is required to have some form of performance measures. In the contract resulting from this RFP, the Department expects that such measures will consist of (1) the timing related to the consultant's submittal of meeting summaries, and (2) the timing related to the consultant's response to any Department requests for input on strategies or requests

for further information. Such performance measures would assume a reasonable amount of response time, taking into account holidays, advance notification of key personnel vacation, etc. Respondents are encouraged, but not required, to suggest reasonable performance measures in the response to this RFP, which the Department may, at its discretion, incorporate into a resulting contract.

### **Requirements**

All proposals must be received no later than **4:30 p.m., Friday, March 10, 2023** in hard copy and in electronic format.

One (1) original and signed, and one (1) additional hard copy should be sent to:

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

Electronic copies should be sent

[Erin.Brennan@vermont.gov](mailto:Erin.Brennan@vermont.gov)

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

### **Selection Criteria**

The Department will evaluate all proposals received based upon reasonableness of cost, completeness and quality of the proposal, qualifications of the individuals proposed to perform the work, relevance of previous experience, and any other criteria it deems relevant. Acceptance or rejection of any or all proposals will be determined by the exercise of the Department's sole discretion. All proposals are subject to an evaluation by the Department and/or non-departmental reviewers. The Department reserves the right (but in no way is obligated) to interview the top prospective candidates to aid in the selection process.

### **Questions Concerning RFP**

Questions about this RFP should be directed to:

Erin Brennan  
Vermont Public Service Department

112 State Street – Drawer 20  
Montpelier, VT 05620-2601  
Phone: (802) 522-6301  
Email: [Erin.Brennan@vermont.gov](mailto:Erin.Brennan@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-a-business.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 Department, 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 Department 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 Department 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 Department.
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 Department upon submission. Unselected proposals may be destroyed or returned to the bidder at the

Department's discretion. This solicitation for proposals in no way obligates the Department to award a contract.

8. The Department 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 Department and its employees and agents free and harmless from all lawsuits, causes of action, debts, rights, judgments, claims, demands, damages, losses and expenses or whatsoever kind 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 Department 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.

**Attachments**

- i. Attachment C: Standard State Contract Provisions (Revised December 15, 2017)



**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)