



Request for Proposal

Seeking Contract for Provisioning Residential and Commercial Internet Services and Fiber Network Operations and Maintenance Services with Lamoille FiberNet Communications Union District

Respond By: 4:30 pm December 16, 2022

RFP Point of Contact:

Valentine Davis, Executive Director
Lamoille FiberNet Communications Union District
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Phone: 802-851-0087
Email: director@lamoillefiber.net

Due Date/Time: 4:30 December 16, 2022

Location of Response: director@lamoillefiber.net Electronic Responses Only

Contents

Introduction & Executive Summary	3
RFP Overview	4
Purpose and Structure:	4
Statement of Work.....	5
Services Include:.....	5
Service Area: Lamoille County, Vermont.....	5
Initial Contract Period: Five Years	5
Key Criteria	5

RFP Timeline 9
Response Format Preparation — Electronic Only..... 10
Confidentiality and Public Records..... 10
Selection Criteria and Process 10
Attachment A OSP Requirements: 12
Attachment B Certified MBE/WBE Participation 13
Attachment C State Provisions:..... 14
Attachment D Federal Terms Supplement- 21

Introduction & Executive Summary

Lamoille FiberNet Communications Union District (“Lamoille FiberNet” or “LFCUD”) seeks to enter into a contract with qualified entities (“Providers”) to 1) assist LFCUD in the provision of reliable, affordable broadband services to customers in our service area, and 2) assist LFCUD in providing high-quality, reliable network maintenance and operations services for our 500-mile fiber network.

Lamoille FiberNet is consortium of ten Lamoille County towns joined together as a municipal entity to build communications infrastructure together. See 30 V.S.A., Chapt. 82. Our service area includes all ten Lamoille County towns: Belvidere, Cambridge, Eden, Elmore, Hyde Park, Johnson, Morristown, Stowe, Waterville, and Wolcott.

Lamoille FiberNet’s goals for this project are:

- to bring reliable, high-quality, high-speed internet services that are locally controlled and cost-effective to every grid-tied unserved and underserved address in our member communities, as soon as possible;
- offer affordable — not just competitive — internet services with pricing of multiple speed tiers, including symmetrical 100/100 mbps;
- leverage existing assets and other public assets and resources to ensure services are sustainable and accessible, and
- provide a scalable, redundant, and resilient network to meet the evolving needs of our communities, including supporting low-income and disadvantaged constituencies.

Please visit our website [Lamoille FiberNet](#) to learn more about our mission, operating principles, and work.

In fulfillment of this RFP, our contractor must commit to:

- supporting our public mission, at a minimum by participating in ACP or other comparable affordable broadband program(s);
- joint marketing and customer development;
- transparent pricing, no data caps, and customer friendly billing and dispute resolution practices;
- providing broadband services that comply with the consumer protection and net neutrality standards established by Vermont;
- ensure all network and end-user services are supported by a reliable, adequately staffed, highly skilled workforce;
- adhering to applicable Treasury Guidance on the eligible uses and other guidance related to the American Rescue Plan State and Local Fiscal Recovery Funds;
- acceptance of the General Terms and Conditions Required by State Law and Federal Funding - See Appendix A (Attachment C Standard Provisions for State Contracts and Grants, Attachment D State of Vermont Federal Terms Supplement – Construction) and State Fiscal Recovery Fund Program Assurances);
- a structure that complies with IRS and other relevant guidelines relating to private management contracts, to enable access to tax-exempt bond financing; and
- ensuring that all subcontractors comply with the same requirements.

RFP Overview

We are interested in providers that have a demonstrated track record of maintaining and operating reliable fiber optic networks, developing and provisioning high-quality broadband services, and delivering reliable and responsive customer service. Potential providers must also demonstrate an ability to timely scale and support the project.

This document outlines the scope of work, the provisional schedule, and the technical, operational, and pricing structure that guide the execution. The document also outlines the process and timeframe for response to the Request for Proposals, as well as the process for selection.

Respondents may provide alternatives or options to achieving our goals, if the proposals are within the parameters of this RFP and the [Act 71 Broadband Construction Grant Program](#).

Respondents to this Request for Proposals may propose to perform some or all of the required scope of work summarized below. Lamoille FiberNet CUD will consider proposals in which:

- A. one respondent fulfills the entire scope of work,
- B. two or more respondents collaborate to fulfill the entire scope of work with a single point of contact, or
- C. one or more respondents with a single point of contact provides a portion of the entire scope of work, leaving the remaining scope to be performed by other vendors.

Purpose and Structure: LFCUD Universal Service Plan, Alignment with Scope of Work

Lamoille FiberNet has teamed with NRTC Broadband Solutions to develop a long-term business plan and design a PON-based 1gb synchronous network capable of a minimum of 100mb/100mb synchronous and future enhancement capacity. Lamoille FiberNet's network will consist of 500 miles of stranded fiber with a 120-mile backbone. The distribution is expected to be a mix of 12-144 fiber counts, with more than half anticipated to be 48-count. 85% of the distribution fiber will be aerial, leaving a significant portion underground.

LFCUD is currently seeking Act 71 construction grant funding from the Vermont Community Broadband Board to build the network. Construction is expected to begin Q2 2023 and take 36 months to complete. The business plan contemplates seeking additional funding in year three to complete the remaining required build and potentially serve additional passings. As a condition of our state and federal funding, LFCUD must own the grant-funded assets, including customer drops constructed with grant dollars. See [Act 71 Construction Grant Program](#).

LFCUD will use its Act 71 funding to serve approximately 5,300 unserved and underserved addresses; the build plan is expected to pass approximately 7,900 addresses. See [PSD 2022 interactive-broadband-map](#) or [Eligible Locations](#). Maximizing the efficient allocation of Act 71 funding to serve these underserved and unserved addresses is a top priority; the goal is to begin to connect customers in 2023. The ability to serve remaining passings and future growth will depend on revenue and leveraging municipal bond financing, private capital, and other funding sources.

The business plan calls for operational expenses, including infrastructure maintenance, network monitoring and security, and retail ISP services, such as billing and multitiered customer support, to be fulfilled by one or more third parties. The CUD's remaining operational expenses include support of the management of the CUD and community engagement. LFCUD plans to support operating expenses through revenue or other sustainable contractual arrangement. The contract must be structured to allow LFCUD to use tax-exempt revenue bonds and adhere to IRS rulings or guidelines for such financing.

Providers that enter into a contract with LFCUD will report to the Executive Director of LFCUD and as necessary support reporting to LFCUD Board, the Vermont Community Broadband Board ("VCBB") and other agencies as necessary.

Statement of Work

Services Include:

- 1. Network Maintenance & Operations** — 24/7/365 infrastructure maintenance, network monitoring and security, installation, and service calls, all subject to industry standards, any federal or state standards and agreed upon performance metrics, including SLAs.
- 2. Internet Services** — Develop, provision, and support residential and commercial ISP services, as described below, including marketing, billing and multitiered customer support.

Service Area: Lamoille County, Vermont

Initial Contract Period: Five Years

Key Criteria

The following items A-F are the key criteria for this RFP. Please provide detailed answers to each. The minimum required scope of work is outlined for each criterion. Any work that is reasonably necessary to accomplish the minimum scope is included in the scope even if it is not described specifically.

Provider shall provide or contract to provide all labor, materials, software, expertise, processes, tools, equipment, and any other resources necessary to fulfill these responsibilities. Provider shall coordinate interactions with governmental authorities and public utilities that are necessary to accomplish the scope of work, with the appropriate assistance of Lamoille FiberNet CUD.

A. Organizational Qualifications

Minimizing duplication of information provided in Criteria B-E below, please provide a brief overview of your organization's qualifications, including management expertise, identification of

key personnel who will be dedicated to this project, and experience supporting broadband services in rural or other hard-to-serve areas, including work with other Vermont Communications Union Districts or Vermont municipalities.

B. Network Operations and Maintenance Qualifications

All respondents must demonstrate and meet the following qualifications:

- Must be capable of maintaining the entire network as described in this RFP.
- Must have verifiable experience maintaining and operating fiber-to-the-premise networks of similar size, scope, and complexity.
- Must be in good standing with federal regulators, such as the FCC and the State of Vermont. Any bidder found to be in FCC red-light status will be disqualified.
- Must provide OSHA-qualified and capable personnel to install, maintain and repair telecommunications equipment in the communications space of utility poles. Evidence of such training must be provided before a bid can be awarded.
- Must have security controls and environmental systems that prevent and protect against security threats to the network and customers.

Network Operations and Maintenance includes:

- Technical integration and quality assurance of network electronics and customer premises equipment before live service is initiated.
- Network monitoring, trouble reporting, and dispatch.
- Subscriber usage monitoring and traffic optimization.
- Maintenance and quarterly replenishment of spare component and materials inventory for network operations center, necessary to enable full recover from service interruptions including emergency restoration of service.
- Second and third level technical support.
- Periodic reporting of network performance and operational performance, including conformance with technical and operational standards established by contract.
- Operational procedures that identify responses and protocols based on outage levels and security threats.
- Participation in the Vermont Emergency Operations Center.
- Website for reporting outage and operation status and planned network changes/outages.

1. Network Performance and Monitoring

Please outline your proposed plan for operating the network, including tools, techniques, and methods of communication, including how you will address and assess operational performance, including maximizing throughput, device failure, device upgrades, cyber security risks, and congestion between network head-ends, devices, and users.

2. Network Restoration Results

Critical to our mission is our annual maintenance program and the ability to quickly restore service outages. In your response, please:

- a. describe your annual cost per mile in maintenance.
- b. describe your SLA performance (please include both onsite and fully restored results for the past 3 years).
- c. describe your NOC (e.g., location, capacity, support platform and hours of operations).
- d. provide overall network Net Promoter Score (“NPS”), or other similar performance metric, for 3 years.
- e. describe networks in service or under construction outside Lamoille County.
- f. outline cost and performance proposal, including SLA and other performance metrics.

3. Installation Services

Provider will be responsible for installation of residential, MDU, and commercial ONT terminations supporting internal fiber and wireless networks.

Many Lamoille County residences remain unserved because their homes are non-standard drops; many residents cannot afford the cost of installation. LFCUD has budgeted for non-standard drops (long drops, underground access) for “eligible” addresses. Act 71 dollars may be used only for eligible addresses; other funds, including contributions from customers, can be used to serve all other addresses. Our goal is to serve all unserved and underserved addresses so respondents should be prepared to support long drops. LFCUD also expects timely turnarounds on all standard installation requests and timely response and completion of nonstandard installations. Specific performance metrics and pricing will be finalized with our selected provider.

In your response, please provide:

- a. description of how you plan to staff and manage installations for LFCUD, including site survey, average standard installation time, and quality assurance and other performance metrics.
- b. Cost per Standard Residential Install. Residential install includes (e.g., modem, WiFi, ONT, number of rooms).
- c. current Drop Policy (e.g., direct buried, aerial, conduit, standard length, cost for additional construction requirements).
- d. average time to install (current performance metric for both time between customer request and install; actual time on job)
- e. MDU installation procedures and costs.

C. Internet Service Speeds and Packages

Our purpose is to provide high-quality affordable Internet to our residents with packages that range from ACP-eligible products to multiple gigabit residential and business offerings. Because we are a municipal entity organized for the benefit of our constituents, we expect to have control over pricing, marketing, offer development, and community engagement. Providers that enable LFCUD to keep end-user costs as low and as competitive as possible will be scored more favorably. In your response, please:

1. outline business proposal for provisioning internet service including customer service and marketing, pricing, and revenue share. If you are proposing a “white label” arrangement, please describe how decision-making over pricing and marketing will be shared. (250 words)
2. describe product offerings and pricing by completing the following chart:

	Download/ Upload	Non-Promotional Price	Key terms (e.g., 2 yr. contract)	Other Comments
Lowest Tier				
Medium Tier				
Symmetrical Gigabit	100/100			
Upper Tier				
Affordable Broadband Program (other than ACP)				

3. explain how you participate in ACP and whether there are any limitations.
4. describe your small business, commercial and enterprise service with pricing where appropriate.

D. Employees

Lamoille FiberNet is committed to contracting with a provider committed to the development, training, and success of their employees. Please provide:

1. number of both employees and contractors in Vermont. If you currently do not have any Vermont employees, please explain how you plan to staff this project.
2. total employees in all service areas.
3. employee satisfaction results, including average length of employment, for past 3 years.
4. evidence of adherence to safety standards for past three years.
5. description of your-in-house employee training, talent development, and retention programs.

E. Customer Service

Lamoille FiberNet is building a highly reliable, multi-gigabit fiber network; to be successful, we need to differentiate ourselves not only in price and speed, but also reliability and customer service. Please demonstrate your ability to support the highest level of customer service. We encourage you to highlight your achievements in this area, and include in your response the following:

1. Net Promoter Score (“NPS”) or other similar customer service performance indicator (past 3 years).
2. expected performance metrics and customer service training and staffing for this project.
3. method of handling customer complaints; history of formal customer complaints filed with Vermont DPS or Attorney General (past 3 years).

F. Financial Stability and Accountability

Lamoille FiberNet is looking for a relationship that is sustainable and can grow over the next 20 years. Critical to our sustainability is the financial strength of our partners. Please provide the following:

1. Income Statements for 3 Years,
2. Balance Sheets for 3 Years,
3. evidence of ability to access capital, and
4. most recent audit and/or public reports (e.g., 10 K).

End Key Criteria

RFP Timeline

- Request for Proposals issued: Nov 1, 2022.
- Interested parties notice of intent to respond by: 4:30 pm Nov 9, 2022.
- Questions deadline (email only): 4:30 pm Nov. 16, 2022.
- Answers deadline: 4:30 pm Nov. 22, 2022.
- Request for Proposals response submission deadline: 4:30 pm Dec. 16, 2022.
- Partner(s) selected on or before: Jan. 16, 2023.

Respondents must be prepared to begin work within 30 days of finalizing the contract. Please refer to Attachments A-D for additional compliance and contracting information.

Questions may be submitted in writing only to:

Valentine Davis, Executive Director
Lamoille FiberNet Communications Union District
Email: director@lamoillefiber.net

Response Format Preparation — Electronic Only

Responses should not be sent by U.S. Mail. Respondents interested in this project should submit an electronic version in editable PDF format to:

Valentine Davis, Executive Director
Lamoille FiberNet Communications Union District
31 Lower Main St., Morrisville, VT 05661
Email: director@lamoillefiber.net

Electronic submissions should be organized into three separate editable PDFs as follows:

1. PDF 1: Cover Letter & Certification — A cover letter signed by an authorized representative, identifying a single point of contact for the RFP, specifying whether the organization is responding in whole or in part to the Scope of Work, and acknowledging the certifications and commitments outlined in the RFP.
2. PDF 2: Response to Statement of Work — Key Criteria
3. PDF 3: Exhibits — May include marketing materials, financial reports, and other relevant materials.

Respondent's proposal must contain all the information specifically required by this Request for Proposal, or acknowledge any information that is not included or is otherwise omitted.

Lamoille FiberNet may, from time to time, issue one or more addenda to this Request for Partnerships. All proposals must include an acknowledgment of the receipt of any addendum that has been issued by Lamoille FiberNet or must state that no addenda have been received.

Confidentiality and Public Records

All responses and other information disclosed in connection with this RFP become the property of LFCUD and, once the resulting contract is finalized, may be subject to disclosure under the State's Access to Public Records Law, 1 V.S.A. § 315 et seq. Respondent should include a memo detailing the materials that it requests to be held confidential by LFCUD and include an explanation as to why such material should be exempted from disclosure under the Vermont Public Records Act (1 V.S.A. §§ 315 et seq.). Respondent must mark all pages or sections that are covered by the exemption. For example, use bold red headers and footers on pages that should be excluded from public inspection and records requests.

Selection Criteria and Process

All RFP responses will be evaluated on the completeness and quality of responses to Key Criteria A-F above (organizational qualifications, demonstrated ability to operate and maintain network performance; ability to deliver and support affordable reliable internet, reliable and skilled workforce, demonstrated commitment and ability to deliver high-quality customer

service) and reasonableness of costs. Qualitative determinations will be made; the criteria will apply equally.

In addition, while bidders may submit proposals for network operations and maintenance services, Internet services, or both, bids that provide both services and serve the entire district will be viewed more favorably.

LFCUD shall have the authority to evaluate responses and select the bidder(s) as may be determined to be in the best interest of LFCUD and consistent with the goals and performance requirements outlined in this RFP. LFCUD reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Failure of bidder to respond to a request for additional information or clarification could result in rejection of that bidder's proposal. To secure a project that is deemed to be in the best interest of LFCUD, LFCUD reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. LFCUD also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of LFCUD.

If LFCUD is successful in negotiating an agreement, LFCUD will issue a notice of award. If LFCUD is not successful, LFCUD reserves the right to select and negotiate with another qualified respondent, or not issue an award.

A response to this Request for Proposals does not commit Lamoille FiberNet to paying any costs incurred in the preparation of proposals. All costs associated with responding to this Request for Proposals are the exclusive responsibility of the respondent.

Lamoille FiberNet reserves the right to modify terms, specifications, and quantities prior to entering into a definitive agreement. Lamoille FiberNet's decision to enter into contract negotiations with one or more respondents does not constitute a binding agreement with respondent. A binding agreement will only be created once final terms are agreed to and Lamoille FiberNet and respondent(s) enter into a definitive agreement.

See Attachments A-D for additional compliance and contracting information.

Attachment A OSP Requirements: Vermont Community Broadband Board Outside Plant Design (OSP) Requirements

This document covers the Construction Grant requirements. All entities applying for grants must comply with the following:

1. Grantee must provide before construction begins a clear constructable design with standards that cover the following:
 - a. Fiber splicing and reservation recommendations to assist with outside plant equipment and fiber sizing
 - b. Loss Budgets
 - c. Account for future and/or unplanned growth including public safety and mobile wireless. Grantee must leave no less than 3 tubes of spare fibers on cables between hubs. Grantee must also spare 1 tube on cables from the OLT to the splitter when not between hubs. The smallest size number of fibers on a route will be 48. This does not apply to post splitter fiber (end runs and driveways)
 - d. Power supply and back-up requirements for active locations
2. Grantee design must include every demand point and include:
 - a. Assigned specific and accounted for PON splitter and OLT port for every identified E-911 Address¹ so that provisioning and activation can be done with minimal truck rolls or future design requirements.
 - b. An estimate for drop distance and route for demand point should be known so that the impact to the material requirements and optical budget is understood.
 - c. Identification of slack budgets and loop locations.
3. Grantee's design deliverables prior to close-out must include detailed planned optical measured loss (dB) calculations. These planned losses will be compared to actual losses to ensure they fall within the Optical Extents budget. Loss testing shall be done in accordance with ANSI/TIA/EIA 526-7.
4. Prior to close-out the grantee will provide splice diagrams in GIS format.
5. Grantee must recommend integration locations for transit to other access points, that consider:
 - a. Geographic redundancy
 - b. Connections with adjacent CUD networks
 - c. Connections with private networks, including leased fiber routes
 - d. Future redundancy opportunities
6. Prior to close-out Grantee must provide design mapping deliverables in a single GIS (ESRI Preferred) form including:
 - a. Online and downloadable field engineering data
 - b. Online and downloadable detailed construction maps
 - c. Bills of materials linked to location
 - d. GIS network diagram that reflects what was built
7. Equipment and materials specified must comply with the domestic content requirements of the American Rescue Plan Act

¹ A demand point is defined as a wired structure or a structure to be wired. Structures that are off grid are not "wired". Demand points also exclude any points that are already served at 25/3 or greater

Attachment B Certified MBE/WBE Participation

It is the policy of the state of Vermont and Lamoille Fiber Communications Union District that Disadvantaged Business Enterprises (DBE), including minority-owned and women-owned enterprises, have the opportunity to participate to the maximum extent feasible in procurement and contracting. The State of Vermont has set a goal of achieving at least ten percent (10%) participation by DBE firms in the dollar value of contracts awarded,

Please indicate whether you or a specified subcontractor are an MBE or WBE by checking one of the following:

_____ Yes I am a certified MBE or WBE

_____ Yes, a subcontractor is certificated MBE or WBE. The subcontractor's name
is _____.

_____ No, I am not a certified MBE or WBE

Company Name

By: _____
Person certifying MBE/WBE Status

Date: _____

**Attachment C State Provisions: 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.

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.

16. 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.

17. 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.

18. 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").

19. 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.

20. 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.

21. 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>

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

23. 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.

24. 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 lockouts) (“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.

25. 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.

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.

26. 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.

27. 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.

28. 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.

29. 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.

Requirements Pertaining Only to State-Funded Grants:

- D. **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.
- E. **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 Federal Terms Supplement- STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Construction) for all Contracts for Construction Connected with 2020 Pandemic

SUSPENSION AND DEBARMENT

(1) This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the State of Vermont. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the State of Vermont, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification – First Tier Participants:

a. Prospective First Tier Contactors must sign and submit a certification as described below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier

participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>).

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Instructions for Certification - Lower Tier Participants (subcontractors):

(Applicable to all subcontracts, purchase orders, and other lower tier transactions)

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended,

debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal; and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. 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.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with

respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed.

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.
- Federal Water Pollution Control Act**
1. 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.
 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. **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).

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- (a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate specified at 29 CFR 5.5(b)(2) per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37). In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.
- (d) *Payrolls and basic records.*
- (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.
- (2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.
- (e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause

DAVIS BACON ACT

All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. Part 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. Part 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

COPELAND ANTI-KICKBACK ACT

a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment

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, at the State's direction, 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, such as termination for default. If the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

TERMINATION FOR CONVENIENCE

1. General
 - a. The Agency may, with thirty (30) days written notice to the Contractor, terminate the Contract or any portion thereof when such termination would be in the best interest of

the Agency. Upon notification the contractor may be directed to immediately stop all work and incur no further costs under the contract.

- b. Any such termination 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.
- c. 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.
- d. No compensation will be allowed for items eliminated from the Contract.
- e. 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.

SUBCONTRACTS

Contractor shall include all above provisions of this Attachment D in all subcontracts for work performed related to this contract.

SFR Assurances: State Fiscal Recovery Fund Program Assurances Issued on June 2, 2021

Effective June 2, 2021, State Fiscal Recovery Fund (SFR) recipients are required to include the below list of assurances in their SFR program applications and/or awards. Agencies and departments can add to these assurances, but please do not alter or remove any of the listed assurances without prior approval from the COVID-19 Financial Office, by emailing ADM.COVID@vermont.gov.

Unless noted otherwise, these assurances apply to all SFR grant/beneficiary programs.

An authorized signatory of [PLACEHOLDER] must attest to the following by checking the box next to the statement and signing this document.

- 1. I have the authority to request payment from the State of Vermont. I am requesting payment for costs incurred in connection with section 602 of the Social Security Act, as amended by section 9901 of the American Rescue Plan Act, Public Law No. 117-2 (March 11, 2021) ("section 602").
- 2. As required by federal law, the SFR will only be used for approved economic support or costs incurred during the period that begins on March 3, 2021 and December 31, 2024, in response to the COVID-19 public health emergency and its negative economic impacts.

- 3. [PLACEHOLDER] will report on incurred expenses and/or losses, in a form and at a frequency prescribed by the State of Vermont and will cooperate with the State of Vermont in creating and retaining appropriate documentation to demonstrate that the proposed uses meet the requirements of section 602.
- 4. To the extent that actual expenditures or demonstrated need is less than the total award amount, [PLACEHOLDER] agrees to return the balance of unspent funds to the State of Vermont. If the United States Department of the Treasury recoups funds from the State of Vermont based on a determination that these award funds were used in a manner not in compliance with section 602, [PLACEHOLDER] agrees that the State of Vermont may recover funds from [PLACEHOLDER] by reducing future funding in State budgets.
- 5. [PLACEHOLDER] must repay the award or portion of the award to the [AWARDING ENTITY] if: any funds received were issued in error; are based on incorrect representations made to the [AWARDING ENTITY]; or any costs forming the basis of an award under this program are covered by other federal funds or federally forgiven loans received by [PLACEHOLDER]. I agree that the final determination of whether there has been a duplication of benefits and the amount to be repaid, if any, will be made by the [AWARDING ENTITY].
- 6. ***[Applies only to grants to subrecipients²]*** [PLACEHOLDER] has applied for FEMA-Public Assistance funding first for all FEMA-eligible expenses before applying to this grant. [PLACEHOLDER] will only use this grant to cover expenses that are not eligible for FEMA-Public Assistance reimbursement.
- 7. [PLACEHOLDER] shall maintain and make available to the State of Vermont and/or United States Department of the Treasury, upon request, all documents and financial records sufficient to establish compliance with section 602. Records and supporting documentation must be maintained for a period of five years after all funds have been expended or returned to Treasury, whichever is later. Records to support compliance with subsection 602 may include, but are not limited to, copies of the following:
 - a. General ledger and subsidiary ledgers used to account for (a) the receipt of SFR payments and (b) the disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;
 - b. Budget records;
 - c. Payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
 - d. Receipts of purchases made related to addressing the public health emergency due to COVID-19;
 - e. Contracts and subcontracts entered into using SFR payments and all documents related to such contracts;

² For assistance in determining whether the relationship between the State, and the entity receiving the funds from the State, is a subrecipient relationship, please complete the Federal Award Classification Checklist. CFO written approval is required to classify any entities as “beneficiaries” of COVID-19 relief funding.

- f. Grant agreements and grant subaward agreements entered into using SFR payments and all documents related to such awards;
 - g. All documentation of reports, audits, and other monitoring of contractors, including subcontractors, and grant recipient and subrecipients;
 - h. All documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
 - i. All internal and external email/electronic communications related to use of SFR payments; and
 - j. All investigative files and inquiry reports involving SFR payments.
- 8. To the best of my knowledge, neither [PLACEHOLDER] nor [PLACEHOLDER]'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.
 - 9. **[Applies only to subrecipient relationships¹]** [PLACEHOLDER] will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether a Single Audit is required for the prior fiscal year. If a Single Audit is required, [PLACEHOLDER] will submit a copy of the audit report to the State of Vermont within 9 months. 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.
 - 10. [PLACEHOLDER] will submit reports as required by the State of Vermont, Agency of Administration, and/or [AWARDING ENTITY].
 - 11. The [AWARDING ENTITY] may share the information on this federal award with other Vermont state agencies, and other Vermont agencies can share information with [AWARDING ENTITY] for the purpose of verifying [PLACEHOLDER]'s eligibility for this or another award or stimulus payment related to the COVID-19 pandemic.
 - 12. [PLACEHOLDER] authorizes the State of Vermont to share data relevant to this award with the U.S. Department of Treasury, including but not limited to previously submitted W-9 data that is related to this award.
 - 13. All of [PLACEHOLDER]'s tax returns are completed and filed through the date of application filing.
 - 14. [PLACEHOLDER] complies with local, state and federal labor laws.
 - 15. [PLACEHOLDER] is in good standing with the Vermont Secretary of State.
 - 16. **[Applies only to hazard grants]** Please certify the following:
 - a. [PLACEHOLDER] has established a process to permit eligible employees to elect not to receive hazard pay funded by a grant provided pursuant to the Program and

record keeping procedures to track which employees have elected not to receive a grant.

- b. [PLACEHOLDER] acknowledges and agrees that grant funds received for hazard pay will only be used to cover hazard pay for eligible employees in accordance with section 602.

- 17. ***[Applies to economic support programs]*** [PLACEHOLDER] has faced economic harm resulting from or exacerbated by the COVID-19 public health emergency. This award will support [PLACEHOLDER] in addressing the economic harm brought on by the COVID-19 public health emergency.

- 18. I attest, under penalty of perjury, that all information provided on this form is true and accurate. I understand that the State of Vermont will rely on this certification as a material representation in making this federal award. Further, I understand that intentional misrepresentation of information is fraud and may subject me or my organization to disqualification from receiving further benefits, administrative penalties, and criminal prosecution.

- 19. [PLACEHOLDER] understands that, if Federal guidance on the regulations of the State Fiscal Recovery Fund change, it may change the terms of this award.

Printed Name:

Authorized Signature:

Title:

Organization Name:

Date:

End Attachments

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