

SELECTION OF CLEAN WATER SERVICE PROVIDERS FOR VERMONT WATERSHED BASINS, PER ACT 76 OF 2019

Release Date: January xx, 2020

Proposals Due: April xx, 2020

Contact for Proposals: Chris Rottler, ANR, Department of Environmental Conservation,
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THE STATE WILL MAKE NO ATTEMPT TO CONTACT VENDORS WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH VENDOR TO PERIODICALLY CHECK <http://www.vermontbidsystem.com> FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THE RFP.

Introduction and Purpose

The Clean Water Service Delivery Act of 2019 (Act 76) establishes a water quality project delivery framework to support Vermont's clean water goals. Act 76 establishes new regional organizations called Clean Water Service Providers (CWSPs). With policy and priority setting from their related Basin Water Quality Councils (BWQCs), CWSPs will administer formula-based State grants for the purpose of identifying, constructing, and maintaining non-regulatory water quality projects necessary to achieve the Lake Champlain and Lake Memphremagog phosphorus TMDLs and other pollutant reduction targets both inside and beyond these specific basins. Formula grants received by CWSPs will be based on a standard allocation reflecting targets for non-regulatory phosphorus and other pollutant reductions to be established by the State of Vermont for all basins. Operations and Maintenance funds will also be provided to CWSPs as a formula grant, based on projects implemented.

Pursuant to Act 76, the State will in 2023 publish a schedule of additional impaired waters for which non-regulatory pollution reduction targets shall be established in other basins. CWSPs will also be eligible to receive formula grants for work in their assigned basin once these targets are established, and the Clean Water Board recommends funding allocations. CWSPs may receive formula grants or other competitive funding for clean water implementation work, which may address phosphorus or other pollutants. CWSPs, where active, will also serve to coordinate statutory partner engagement and BWQC engagement in the tactical basin planning process, with support from the State's basin planning staff.

Act 76 does not prescribe the type of host organization that may serve as CWSPs, nor all their capabilities. Considering that significant State resources from the Clean Water Fund will be directed to CWSPs in a formulaic manner, the State is establishing base-level capabilities that will be examined by this RFP in order to direct the

selection of CWSPs. These criteria were developed by considering existing requirements for State granting and contracting pursuant to the Vermont Agency of Administration's policies. The criteria were further informed by a detailed examination of the process by which the Vermont Agency of Human Services appoints "Designated Agencies" whom serve to implement public health services in a decentralized manner, similar to the intent of Act 76. Lastly, these criteria were developed in consultation with an advisory stakeholder group, and finally, the RFP was subjected to public comment pursuant to Act 150 of 2016.

The outcome of this RFP will be the selection of entities that will serve as a CWSP for one or more planning basins in the State of Vermont (see Appendix 1 for a map and list of the 15 basins). Once selected by this RFP, CWSPs will be proposed for assignment in a new chapter of the Vermont Environmental Protection Rules, required to be promulgated by Nov. 1, 2020 under Vermont's Administrative Procedures Act. Applicants may propose to serve as a CWSP for a single planning basin, or a set of planning basins. Entities that are selected and assigned as a CWSP may, upon mutual agreement of the CWSP and State, serve as a CWSP on an interim basis in any other basin should a vacancy emerge. CWSPs shall be required to support distinct BWQCs for each basin they propose to service.

More information about Act 76, planning basins, non-regulatory projects, CWSPs and BWQCs, may be found here: <https://dec.vermont.gov/water-investment/statutes-rules-policies/act-76>

Scope of Work

DEC seeks proposals for the following:

The successful applicants will administer formula grant funded programs under 10 VSA §925, the operation and maintenance funding under 10 VSA §1389(e), and other applicable funding within Act 76 in one or more watershed basins. In collaboration with BWQCs and with technical and financial support from the State, successful applicants will have responsibility for project identification, prioritization, development/design, construction, verification, inspection, and operation and maintenance to be administered in accordance with statute, DEC rules, guidance, and grant documents. Basin specific pollution reduction values and allowable project costs to determine formula grant amounts will be developed by November, 2021 for Lake Champlain, by November, 2022 for Lake Memphremagog, and November, 2023 for all other previously listed impaired waters.

Applicants interested in serving as a Clean Water Service Provider shall submit a proposal that addresses their plan for/commitment to the following:

1) Responsibilities of a Provider: Adherence to Applicable Law, Rulemaking and Guidance

Per Act 76 of 2019, the State of Vermont's Department of Environmental Conservation shall adopt rules and develop guidance, instructing and informing clean water service providers of their responsibilities and requirements. Act 76 states that, in collaboration with the BWQC and with technical and financial support of the State, CWSPs shall be required to identify, prioritize, develop, construct, verify, inspect, operate, and maintain clean water projects in accordance with the requirements of the subchapter.

The forthcoming rules and guidance will address all areas covered by Act 76, including CWSP governance principles (such as site control, dispute resolution, procurement, payment, fiscal management, audits,

compliance with Vermont's Open Meetings laws, non-discrimination, and decertification, among other topics), the process for project selection, project life for maintenance and operation purposes, and other requirements to implement the goals of pollution reduction through non-regulatory projects. Selected entities that agree to be CWSPs will need to comply with the final rules and guidance, as a condition of relevant grants issued under Act 76. The expected timeframe for adoption of rules is November 1, 2020.

2) Program Delivery

Applicants shall describe their plan/vision for how they will implement the requirements and responsibilities of being a CWSP in the basin or basins for which they are applying. While most of these concepts will be addressed by the rule and guidance that is issued by the State, at a minimum, the plan should address non-regulatory project identification, prioritization, selection, maintenance, reporting, and governance, including staffing, project tracking, subgrantee selection and payment. While many of these efforts will be done in cooperation with the BWQC and with technical and financial assistance from the State, applicants should focus on demonstrating knowledge of key concepts, a vision for implementation, and presenting a feasible plan that is efficient and effective. Program delivery might include sub-granting or sub-contracting CWSP work to eligible entities.

3) Basin Water Quality Councils

Act 76 says that a CWSP designated under the Act shall establish a BWQC for each basin in which a CWSP operates. Successful applicants will be expected to develop their BWQC in accordance applicable statute, rules and guidance. BWQC should have sufficient technical ability and diversity to provide this service as required by law.

A CWSP applicant is encouraged to conduct outreach to potential BWQC members and may apply as a full entity. By statute, a BWQC includes a minimum of two persons representing of the natural resource conservation districts in that basin; two persons representing regional planning commissions in that basin; two persons representing local watershed organizations; one representative for an applicable statewide land conservation organization; and two persons representing municipalities from that basin.

4) Payment

Program delivery costs, including those costs incurred by subcontractors and subgrantees cannot collectively exceed 15% of the formula grant, per 10 VSA §925. It is expected, but not certain, that there will be a 'start-up' grant for assigned CWSPs under this RFP. It is unclear at this time whether start-up funds would also be available to new CWSPs selected in the future. Payment for project implementation for phosphorus reduction projects will follow a formula, based on the number of pounds of phosphorus the project is designed to capture. Payment for operations and maintenance will follow a separate schedule that will be established in the forthcoming rule/guidance.

See Deliverables Table in **Deadlines and Content of Proposals** section for all deliverables that must be included in the proposal.

Funding and Method of Payment

No funding is to be directly available under this RFP. However, entities identified and assigned by rule as a CWSP will have access to funding from the Clean Water Fund to initiate operations and work with the Agency in the development of relevant aspects Act 76. Funding availability is of course subject to recommendations from the Clean Water Board and Governor, as appropriated by the General Assembly.

Project Timeline

CWSPs service will be governed by the forthcoming CWSP rulemaking and guidance document. The ongoing service of a CWSP will be subject to periodic reviews, to be established in the forthcoming rulemaking. Consistent with the Agency of Human Services Designated Agency model, it is anticipated that CWSPs selected under this RFP may be eligible to serve until such time as they elect to stop serving, or circumstances require selection of a different CWSP. Specific deliverable deadlines and payments will be established by rule and guidance and incorporated into grants to be issued to CWSPs.

Procurement

Awardees will be expected to maintain written procedures for procurement transactions. Any equipment, supplies, and/or services procured outside of an awardee's organization will need to be obtained per the awardee's procurement or purchasing policy.

Deadlines and Content of Proposals

Questions: All questions are required to be submitted electronically via email to Chris Rottler at chris.rottler@vermont.gov by **March xx, 2020 at 12:00 pm (noon) EDT** using the subject line "CWSP RFP Questions."

Submittal: All proposals must be submitted electronically via email to Chris Rottler by **April xx, 2020, at 4:00 pm EDST** using the subject line "CWSP RFP Proposal."

Bid opening: Proposals are anticipated to be opened **April xx, at 9:00 am EDST**.

Notification: Proposal preliminarily accepted by the State are anticipated to be notified no later than **April or May xx, 2020**.

All proposals must include the following information:

- a) Proposals must clearly address each of the selection criteria identified in this RFP below.
- b) Proposals must identify the basin or basins for which the applicant is seeking to serve as a CWSP.
- c) A detailed scope of work, no more than 10 pages in length, describing how the deliverables will be met.

The plan shall include at a minimum:

A proposal for how the entity will implement the items listed in the Scope of Work section, above, including how the applicant will identify, prioritize, develop, construct, verify, inspect, operate, and maintain clean water projects

A description of support systems – IT/project tracking, and a statement committing to use DEC-developed IT solutions for reporting

A description of current and proposed staffing and partnerships for CWSP work/projects

A description of current, or proposed operating policies, including internal controls, personnel, procurement, accounts payable, accounts receivable, fixed assets,

reconciliation, governing board oversight (for corporate/corporate non-profit entities), records, and payroll.

Identify existing or planned staffing, experience with facilitation, consensus building, water quality projects, project management.

- d) Information showing that the applicant is solvent, liquid, and not overly leveraged, including financial statements for the last three years of operations (audited, if available).
- e) Letters of reference/support from at least three entities eligible to serve as a member of the basin's BWQC. Letters from a diversity of entities are encouraged. References/letters from other entities, such as from municipalities, or important water quality organizations not named in Act 76 as statutory parties to the BWQC may also be submitted.
- f) A statement identifying individuals who were involved in the preparation of the proposal as well as a single point of contact.
- g) A detailed description of the organization's experience with grant management and project staff qualifications and experience. This can include resumes, reports, and descriptions of expertise.
- h) A detailed description of the organization's experience with project management and project staff qualifications and experience. This can include resumes, reports, and descriptions of expertise.
- i) A detailed description of the organization's experience with water quality projects, including non-regulatory project implementation.
- j) A certificate of insurance, indicating that the entity or entities have met the insurance requirements listed in Attachment C. Professional liability insurance may be required for CWSPs or their subcontractors/subgrantees; proof of professional liability coverage is not required at this time.
- k) A completed Certification of Good Standing (Appendix 2, see attached).
- l) A completed Risk Assessment Questionnaire (Appendix 3, see attached).

Selection Criteria

Proposals will be reviewed and evaluated by three or more DEC staff members. Applications will be reviewed on a basin by basin basis; applicants will only be evaluated against other applicants for the same basin. Selection will be based on the following criteria:

- **35 points – Operations Plan/Vision**
 - Scope of work, per the requirements in this RFP
 - Support systems – IT/project tracking
 - Identify existing operating policies or plan for developing same
 - Identify existing or planned staffing, including their experience with meeting facilitation, consensus building, water quality projects, and project management, as appropriate.
- **15 points -- Experience in/Plan for Grant Management**
 - Procurement, contracting and disbursement/management of subgrants or subcontracts
 - Management of received grants and contracts, and experience with implementation as well as financial performance reporting
- **15 points – Experience in/Plan for Project Management**
 - Facilitating and organizing meetings
 - Strong financial management experience
 - Project accounting and reporting
- **15 points – Technical Capacity**

- Ability to ensure quality control over projects or subcontract/subgrant to do same
- Ability to ensure development, implementation, operation and maintenance of water quality projects or subcontract/subaward to do same.

- **20 points – Letters of Reference/Support, including from potential BWQC members**

Should there be a need in any given basin, a CWSP from a different basin will be eligible to implement projects in that other basin, as determined by the State. Factors that the State will consider in selecting the backup CWSP include geographic location, fiscal condition of the CWSP, familiarity of the CWSP with the other basin, past service of the CWSP in their own basin, and capacity.

Applicants may be asked to interview with the selection team as a part of the selection process. If this occurs, questions will be provided ahead of time. The decision to interview applicants will be made on a basin by basin basis.

Eligibility

Successful applicants shall at a minimum, demonstrate that they are solvent, sufficiently liquid, and not overly leveraged. Applicants shall provide applicable financial statements, including a: Profit/Loss Sheet, Balance Sheet, and a Form 990. Audited financial statements are preferred, if available.

A current Vermont state employee responding to this RFP as a sole proprietor or owner of other form of business must obtain a waiver from the Vermont Department of Human Resources prior to entering into contract with the State.

Reservation of State’s Rights

The State reserves the right:

- to accept or reject any and all bids, in whole or in part, with or without cause in the best interest of the State;
- waive technicalities in submissions; (A technicality is a minor deviation from the requirements of an RFP that does not impact the substantive terms of the bid/RFP and can be considered without a material impact on the RFP process, etc.). If uncertain of whether a condition qualifies as a technicality, consult with the OPC or AGO for clarification. For example, a late bid is NOT considered a technicality;
- to make purchases outside of the awarded contracts where it is deemed in the best interest of the State; and
- to obtain clarification or additional information.

Insurance

Respondents to this RFP should be aware that they will need to agree to the State of Vermont Customary Contract Provisions (Attachment C) in order to execute an agreement for this project.

Special care should be paid to Workers’ Compensation coverage for out-of-state Vendors. Vermont statute requires insurance carriers be specifically licensed to write Workers’ Compensation coverage in Vermont. Out-of-state Vendors may have Workers’ Compensation coverage valid in their home state, but their carrier may not be licensed to cover workers’ compensation for work actually performed by their employees in Vermont.

Confidentiality

After conclusion of the contracting process, Proposals are a matter of public record. If an application includes material considered by the applicant to be proprietary and confidential under 1 V.S.A., Chapter 5, the application shall clearly designate the material as such and explain why such material should be considered confidential. The Vendor must identify each page or section of the Proposal that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the applicant if the identified material were to be released.

Under no circumstances shall the entire Proposal be designated as proprietary or confidential. If the Vendor marks portions of the Proposal confidential, the Vendor shall provide a redacted version of the Proposal for release to the public. Notwithstanding the above, the Secretary has an independent obligation under Vermont law to determine whether any proposal material is subject to public inspection and copying upon request, which may include material that has otherwise been designated as proprietary and confidential by the Vendor. The Vendor's designation of material as proprietary and confidential, and submission of a redacted Proposal, are provided to the Secretary for informational purposes in the event the Agency receives a public records request and will not result in withholding of materials by the Secretary unless expressly supported by Vermont law.

Attachments

- SFA – Standard Grant Agreement (template)
- Attachment C – Standard State Provisions for Contracts and Grants, Revised December 15, 2017
- Appendix 1 – Map of Vermont Watershed Planning Basins
- Appendix 2 - Act 154 Good Standing Certification
- Appendix 3 – Risk Assessment Questionnaire

SFA - STANDARD GRANT AGREEMENT

1. Parties: This is a Grant Agreement between the State of Vermont, Department of Environmental Conservation (hereinafter called “State”), and _____ with principal place of business at _____ (hereinafter called “Grantee”). It is the Grantee’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Grantee is required to have a Vermont Department of Taxes Business Account Number.
2. Subject Matter: The subject matter of this Grant Agreement is for services generally on the subject of a _____. Detailed scope to be provided by the Grantee are described in Attachment A, Scope of Work to be Performed.
3. Maximum Amount: In consideration of the scope of work, the State agrees to pay Grantee, in accordance with the payment provisions specified in Attachment B, Payment Provisions, a sum not to exceed _____. A detailed summary of the budget for this project can be found in Attachment B. This grant award cannot be used as match for the purpose of obtaining additional federal funds by the Grantee without written approval from the State.
4. Subcontracting: Grantee shall not assign labor duties to a subcontractor without the prior written approval from the State. Written approval is obtained by completing the Request for Approval to Subgrant/Subcontract form.
5. Procurement: The Grantee certifies that for any equipment, supplies, and/or services outside of their organization, that they have and will follow their procurement policy.
6. Ownership and Disposition of Equipment: Any equipment purchased or furnished to the Grantee by the State under this Grant Agreement is provided on a loan basis only and remains the property of the State. Grantee must submit a written request to retain the equipment at the end of grant term for the same use and intended purpose as outlined in this agreement. The written request should include: description of equipment, date of purchase, original cost and estimated current market value.
7. Source of Funds: State funds.
8. Grant Term: The period of Grantee’s performance shall begin upon date of execution, signified by the date of signature by the State and end on _____.
9. Amendment: No changes, modifications, or amendments in the terms and conditions of this Grant Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Grantee. No amendment will be considered without a detailed justification to support the amendment request. Failure to provide an adequate justification may result in the denial of the request. Any request for an amendment to this agreement must be made in writing at least thirty (30) days prior to the end date of this agreement or the request may be denied.
10. Cancellation: This Grant Agreement may be cancelled by either party by giving written notice at least _____ days in advance.
11. Fiscal Year: The Grantee’s fiscal year starts _____ and ends _____.
12. Work product ownership: Upon full payment by the State, all products of the Grantee’s work, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, or similar documents, become the sole property of the State of Vermont and may not be copyrighted or resold by Grantee.

13. Attachments: This Grant consists the following attachments that are incorporated herein:

- Attachment A - Scope of Work to be Performed
- Attachment B – Budget and Payment Provisions
- Attachment C - Customary State Grant Provisions
- Attachment D – Other Grant Provision(s) if necessary
- Request for Approval to Subgrant/Subcontract

WE, THE UNDERSIGNED PARTIES, AGREE TO BE BOUND BY THIS GRANT.

STATE OF VERMONT

GRANTEE

By:

By:

Commissioner

Name: (Print) _____

Dept. of Environmental Conservation

Title: _____

Attachment A

Scope of Work to be Performed

Part or All of the Scope May be Subcontracted with Written Prior Approval from the State

Attachment A of a Standard State Grant Agreement describes the nature and extent of the Grantee's obligations. This is the most important part of the agreement. To avoid problems later, you should make the description clear, unambiguous and complete. Specify all performances and products to be delivered. Avoid "legalese"; plain English is sufficient and preferred.

The following checklist should be helpful in writing specifications:

1. Does the work statement let the Grantee know what is ahead? Is it specific enough to allow the Grantee to make a list of human resources and, if necessary, special facilities, equipment, subcontracts and/or consultants needed to accomplish the work?
2. Is general and background information separated from directions to the Grantee and required performance? The minimum that the Grantee is expected to do should be clearly described.
3. Have the granting agency's responsibilities to the Grantee been clearly identified? If not, the state could find it more difficult to enforce its rights under the grant agreement.
4. Will it be possible to measure performance? Are the end results and specific duties of the Grantee stated in such a way that he/she/it knows what is required and the grantor official who orders payment can tell whether payment is due? Have the type and quantity of reports required of the Grantee (technical, financial, progress, etc.) been described and specified? Is there a date for each task or outcome the Grantee must deliver? These measures and details are crucial so that both programmatic and financial site audits - if required- are performed and that there are specific items/ tasks set forth in the grant agreement to verify and hold accountable for.

Attachment B

Payment Provisions

See Payment Schedule in Attachment A

This grant is a performance based grant. Payments made to the grantee by the State are based on the successful completion of performance measures. Successful completion of each measure is clearly outlined in the scope of work. If the grantee is unable to obtain successful completion of a performance measure within the terms and conditions of the grant agreement, the Grantee may only receive a portion of the payment for that measure if partially completed or will not receive payment at all if substantial performance of that measure is not demonstrated.

The State will measure sufficient progress by examining the performance required under the work plan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. The State may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

Risk-Based Assessment:

Risk Level:

| Risk Level | Monitoring Requirements |
|------------|---|
| Low | - Final performance report required. |
| Moderate | - Grantee is required to submit a biannual progress report(s). Progress report(s) must include: summary of progress made on deliverables within reporting timeframe, milestone status updates, technical/cost/schedule issues encountered, and work planned for next period. |
| High | - Grantee is required to submit quarterly progress reports (see above). - Grantee must document a course of corrective actions in order to maintain future eligibility for Vermont DEC funds. Grantees have a period of three years to complete corrective actions. If after three years no corrective actions have been taken, VDEC will no longer provide funds to the organization. |

- These monitoring requirements are required deliverables even when not listed explicitly in the deliverables table in Attachment A.
- If you are required to have an audit under the new OMB Uniform Guidance, you are to report to Vermont DEC the audit, findings, Management Response Letter including corrective actions within 6 months after the end of your fiscal year.

The Grantee shall:

- Maintain a copy of all receipts on file for review upon request by the State,
- Include a copy of all receipts for costs requested for reimbursement.
- Other:

Other Provisions

Up to 90 days of pre-award costs are allowable under this agreement as determined by the Grant Manager and as related to scope of work in Attachment A.

Address All completed forms should be submitted to:

Name:

Department:

Address:

Final Payment: Final payment will be paid upon receipt and satisfactory review of all deliverables, as described in the scope of work, a final financial report documenting expenditure of 100% of grant funds, and where appropriate, documentation of required match.



Form 430 Request for Funds

Form must be filled out entirely before payment is released

Grantee Name:

Grant #: **Purchase Order #:** **Payment#:** **Amount Requested:**

Performance Measures and Deliverables:

| Performance Measure and Submitted Deliverable | Budget Amount | Amount Requested | Remaining Amount | Total Match Documented (if applicable, use total from Form 430-M) | Match Committed (if applicable) |
|---|---------------|------------------|------------------|---|---------------------------------|
| 1 - | \$ | \$ | \$ | \$ | |
| 2 - | \$ | \$ | \$ | \$ | |
| 3 - | \$ | \$ | \$ | \$ | |
| 4 - | \$ | \$ | \$ | \$ | |
| 5 - Final report. | \$ | \$ | \$ | \$ | |
| Total | \$ | \$ | \$ | \$ | \$ |

Approvals for Payment

Signed by:

Grantee: _____ Date: _____

Title: _____

The Grantee certifies that deliverables being billed on this invoice have been completed as outlined in the grant agreement.

State's Project Manager: _____ Date: _____

The Grant Manager has verified that deliverables being billed on this invoice have been completed as outlined in the grant agreement.

DEC Financial Operations: _____ Date: _____

The DEC Financial Operations processed the current invoice for payment on signed date.

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

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

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

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

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

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

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

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

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

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

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

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

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

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

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

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

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

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

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

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

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

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

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

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

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

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

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

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed

by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

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

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

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

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

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

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

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

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

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

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

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

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

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

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

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

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

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or

not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

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

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

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

(End of Standard Provisions)

Attachment D

Other Grant Agreement Provisions

Many grant agreements can be fully described using the materials described in preceding appendices to this bulletin. In some cases, however, agencies will want to add specially tailored provisions not available on preprinted forms or in the main agreement itself. In addition, when granting for professional services, agencies will be required (absent an appropriate waiver) to include a professional liability insurance provision. Attachment D of the Grant Agreement, "Other Provisions", should be used for this purpose. Some possible "Other Provisions" are suggested below.

1. **Cost of Materials:** Grantees will not buy materials and resell to the State at a profit.
2. **Identity of workers:** The Grantee will assign the following individuals to the services to be performed under the provisions of this Agreement, and these individuals shall be considered essential to performance. [cite individuals]. Should any of the individuals become unavailable during the period of performance, the State shall have the right to approve any proposed successors, or, at its option, to cancel the remainder of the Agreement.
3. **Prior Approval/Review of Releases:** Any notices, information pamphlets, press releases, research reports, or similar other publications prepared and released in written or oral form by the Grantee under this Grant Agreement shall be approved/reviewed by the State prior to release.
4. **Ownership of Equipment:** Any equipment purchased or furnished to the Grantee by the State under this Grant Agreements provided on a loan basis only and remains the property of the State.
5. **Legal Services:** If the Grantee will be providing legal services under this Grant Agreement, Grantee agrees that during the term of the Grant Agreement he or she will not represent anyone in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. After termination of this Grant Agreement, Grantee also agrees that he or she will not represent anyone in a matter, proceeding, or lawsuit substantially related to this Grant Agreement.
6. **Compliance with other laws:** The Grantee agrees to comply with the requirements of [*list specific applicable federal or state statutory or regulatory provisions*], and agrees further to include a similar provision in any and all subcontracts. **Comment:** *Use this clause to refer to any statutory or regulatory provisions that must by law, Contract condition or otherwise, be included in the wording of the contract. This may include in particular cases the provisions of the Federal Rehabilitation Act of 1973 (Sec. 504), as amended; the Age Discrimination Act of 1975; and the Civil Rights Act of 1964.*
7. **Confidentiality:** Sometimes agencies have legitimate needs to protect confidential information. The RFP can require Grantees to maintain confidentiality, although the contract ultimately should duplicate this requirement. Conversely, bidders sometimes want to know how the State will treat the bidder's proprietary information. The RFP should state whether such information will be returned or retained by the agency.
8. **Individually identifying information:** Grantee must not use or disclose any individually identifying information that pursuant to this contract is disclosed by the State to the Grantee, created by the Grantee on behalf of the State, or used by the Grantee for any

purpose other than to complete the work specifications of this Contract unless such use or disclosure is required by law, or when Grantee obtains permission in writing from the State to use or disclose the information and this written permission is in accordance with federal and state law.

9. **Progress reports:** The Grantee shall submit progress reports to the State according to the following schedule. *[insert schedule]* Each report shall describe the status of the Grantee's performance since the preceding report and the progress expected to be made in the next successive period. Each report shall describe Grantee activities by reference to the work specifications contained in Attachment A of this contract and shall include a statement of work hours expended, expenses incurred, bills submitted, and payments made. **Comment:** *This clause may be used either in Attachment A (Specifications of Work to be Performed) or here. It provides information for interim evaluation of the Grantee's work and assists in detecting difficulties that may lead to necessary modification or cancellation of the contract. If payments are to be conditioned on receipt of progress reports, this should be clearly set forth in Attachment B: Payment Provisions.*
10. **Grantee's Liens:** Grantee will discharge any and all contractors or mechanics' liens imposed on property of the State through the actions of subcontractors. 20
11. **Performance Bond:** The Grantee shall, prior to commencing work under this Grant Agreement, furnish to the State a payment and performance bond from a reputable insurance company licensed to do business in the State of Vermont, guaranteeing the satisfactory completion of the Grant Agreement by the Grantee and payment of all subcontractors, suppliers and employees.
12. **Professional Liability Insurance:** Before commencing work on this Grant Agreement and throughout the term of this Grant Agreement, Grantee shall procure and maintain professional liability insurance for any and all services performed under this Grant Agreement, with minimum coverage of \$_____ per occurrence.
13. **State Minimum Wage** – The Grantee will comply with state minimum wage laws and regulations, if applicable.
14. **Health Insurance Portability and Accountability Act (HIPAA):** The confidentiality of any health care information acquired by or provided to the Grantee shall be maintained in compliance with any applicable State or federal laws or regulations.
15. **Equal Opportunity Plan:** If they are required by the Federal Office of Civil Rights to have a plan, the Grantee must provide a copy of the approval of their Equal Opportunity Plan.
16. **Supplanting:** If required, the Grantee will submit a Certification that funds will not be used to supplant local or other funding.
17. **Compliance with Cost Principles:** Grantee shall comply with the requirements set forth in OMB Circular A-87 (for State and Local Governments including schools), A-122 (for Non Profit organizations), or A-21 (for Higher Education Institutions) as appropriate for the Grantee type of organization.
18. **Compliance with Administrative Regulations:** Grantee shall comply with the requirements of OMB Circular A-102 (State & Local Governments and Schools) or A-110 (Institutions of Higher Education, Hospitals, and Non Profit organizations) as appropriate for the Grantee's type of organization .

**Department of Environmental Conservation
Request for Approval to Subgrant/Subcontract**

| | |
|------------------------------|--|
| Date of Request: | |
| Original Grantee/Contractor: | |
| Address: | |
| Phone Number: | |
| Agreement #: | |

| | |
|---------------------|----|
| Subcontractor Name: | |
| Address: | |
| Phone Number: | |
| Contact Person: | |
| Scope of Services: | |
| Maximum Amount:: | \$ |

| | |
|--|--|
| Original Grantee/Contractor Signature: | |
| By signing above, the Grantee/Contractor certifies that the subcontractor has been selected using their procurement policy, as required by the original agreement, and certifies that any conflict of interest has been disclosed in writing as required by the original agreement (Attachment C, Section 23). | |

DEC Business Office Review

Approval: _____ **Date:** _____

On the reverse side of this form there is guidance about language that must be included by the contractor in subcontracting agreements.

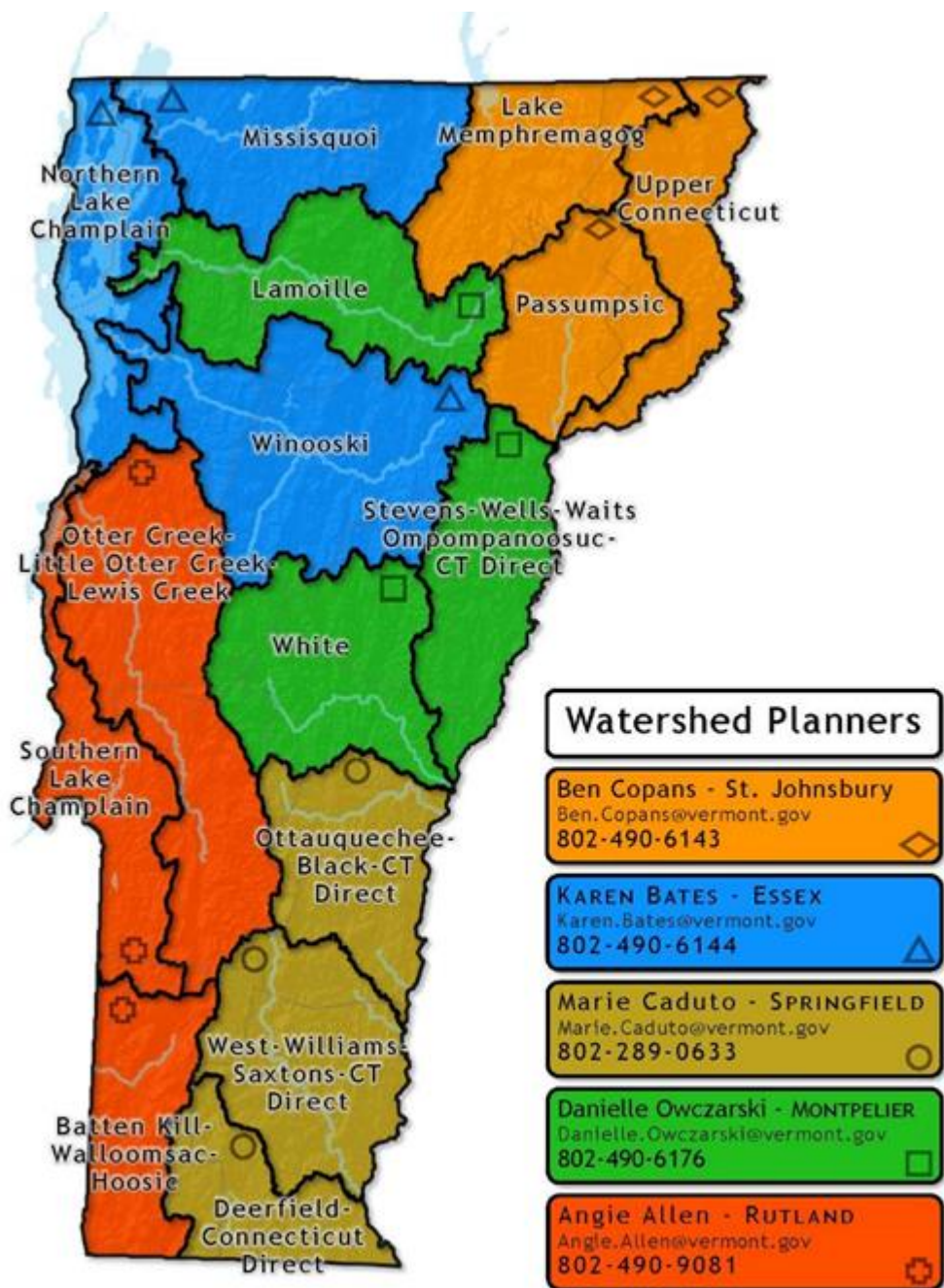
Per Attachment C, subcontractors must include standard language from Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont

1. 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").

Appendix 1 Vermont Watershed Planning Basins



Appendix 2
Act 154 Good Standing Certification

Applicant Name _____

Address _____

As an authorized representative of the grant applicant and in accordance with Act 154 of 2016, Section 13*, I hereby certify on behalf of the Applicant that

(check one):

The Applicant is currently in “good standing” with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets. The Applicant is not a named party in any administrative order, consent decree, or judicial order relating to Vermont water quality standards issued by the State or any of its agencies or departments and is in compliance with all federal and State water quality laws and regulations.

Further, the Applicant will notify the State agency or department administering this State-funded grant if no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets at any time prior to or during implementation of this State-funded award.

I am not able to certify that the Applicant is in “good standing” with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets for the following reasons:

*A copy of Section 13 is on the opposite side of this Certificate or can be found at http://finance.vermont.gov/sites/finance/files/documents/Forms/Grant_Recipients/FIN-Act_154_Section_13.pdf. Any person should first review and understand applicable terms, instructions and potential consequences in Section 13, including the definition of “Applicant” for purposes of this Certificate.

| | |
|------------------|--------------|
| Name | Title |
| Signature | Date |

This form must be completed and signed by an authorized official of the grant applicant organization.

Section 13 of Act 154 of 2016 – Certification for Grants

SECRETARY OF ADMINISTRATION; WATER QUALITY STANDARDS CERTIFICATION FOR STATE-FUNDED GRANTS; REPORT

(a) As used in this section:

(1) “Applicant” shall include all entities, including businesses in which the applicant has a greater than 10 percent interest, or land owned or controlled by the applicant.

(2) “Good standing” means the applicant:

(A) is not a named party in any administrative order, consent decree, or judicial order relating to Vermont water quality standards issued by the State or any of its agencies or departments; and

(B) is in compliance with all federal and State water quality laws and regulations.

(b) (1) The Secretary of Administration shall amend the Standard State Provisions for Contracts and Grants, referred to as Attachment C to Administrative Bulletin 5, to require an applicant for a State-funded grant to certify, under penalty of perjury, that the applicant is in good standing with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets.

(2) The requirement under this subsection shall allow for an attachment or include space for an applicant who cannot certify under subdivision (1) of this subsection to explain the circumstances surrounding the applicant’s inability to certify under subdivision (1) of this subsection.

(3) At any time prior to the award of a State-funded grant or during implementation of a State-funded grant, an applicant shall notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets.

(c) A State agency or department may consider an applicant’s certification or explanation under subsection (b) of this section in determining whether or not to award a State-

funded grant to the applicant.

(d) (1) If a State-funded grant applicant knowingly provides a false certification or explanation under subsection (b) of this section or fails to notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets as required in subdivision (b)(3) of this section, the State or its agencies or departments may:

(A) seek to recover the grant award; and

(B) deny any future grant award to the applicant, based on the false certification or explanation or failure to notify, for up to five years.

2) In recovering a grant award under this section, the State or its agencies or departments shall be entitled to costs and expenses, including attorney’s fees.

(e) This section shall not apply to federally funded grants, contracts, or tax credits or federal or State loan programs.

(f) On or before January 15, 2021, the Secretary of Administration shall submit a report to the House Committees on Fish, Wildlife and Water Resources and on Commerce and Economic Development and the Senate Committees on Natural Resources and Energy and on Economic Development, Housing and General Affairs regarding methods to require all economic development assistance applications to include a certification that the applicant is not in violation of the requirements of programs enforced by the Agency of Natural Resources under 10 V.S.A. § 8003(a). The report shall also include information regarding any enforcement action taken by the State or its agencies or departments under subsection (d) of this section.

Appendix 3



RISK ASSESSMENT QUESTIONNAIRE

The purpose of the risk assessment is to determine whether or not a potential grantee is financially stable and if the agency uses accounting systems that are adequate to meet the State of Vermont administrative requirements. Please complete the following questionnaire and have it signed by the Executive Director and Fiscal Officer for your organization.

Name of Entity Completing Questionnaire: _____

| Question | Yes | No | N/A |
|--|-----|----|-----|
| 1. Does your agency maintain documentation to substantiate the value of in-kind contributions? | | | |
| 2. Does your agency use an electronic accounting software system (as opposed to manual)? | | | |
| 3. Has your agency recently implemented any new or substantially changed systems, for example, financial management or accounting systems? (If yes, please explain.) | | | |
| 4. Does the accounting system track receipts and disbursements by funding source | | | |
| 5. Does your agency have a written Accounting and Financial Reporting policy? | | | |
| 6. Does your agency have a written Personnel policy (to include travel reimbursement, fringe benefits, etc.)? | | | |
| 7. Does your agency have a Financial Director, Financial Manager, Treasurer or equivalent? (If no, please identify the name and position of the employee(s) who is responsible for supervising the quality of accounting and financial reporting of an organization. | | | |
| 8. Does your agency regularly monitor budgeted versus actual expenditures to ensure that cost categories aren't over-spent or under-spent? | | | |

| Question | Yes | No | N/A |
|---|-----|----|-----|
| 9. Are all purchases made based on purchase requests/purchase orders which must first be approved by a responsible agency official? (If no, please explain.) | | | |
| 10. Does your agency have written procurement procedures indicating which individuals are authorized to initiate a purchase request, the flow of documents, and the requested levels of approval? | | | |
| 11. Does the agency have a system to track staff time spent on various grants/projects, for those employees whose salaries are allocated to more than one contract/grant? | | | |
| 12. If your agency expended more than \$750,000 in federal funds during the previous fiscal year, did your agency have a Single Audit performed? If so, please include Single Audit Report with submittal of Risk Assessment Questionnaire. | | | |
| 13. If there were any findings in the report, has your agency implemented action plans to address all findings? (If no, please explain.) | | | |
| 14. Does your agency have a Policy and Procedures Manual that is made available and accessible to all employees? | | | |
| 15. Has your agency executed any contracts or MOU's with any other governmental or non-governmental agencies in the past three years? (If yes, please describe.) | | | |

I hereby certify that to the best of my knowledge and belief, the information provided in response to the foregoing questions is true and accurate.

Chief Officer Signature

Chief Fiscal Officer Signature

Date

Date