Vermont Clean Water Board Working Meeting Minutes

Date/Time: Friday, February 21, 2020, 10:00 am – 12:00 pm
Location: National Life Davis Building – 1 National Life Drive, The Catamount Room (N215)

Clean Water Board Members/Designees:
Susanne Young, Agency of Administration (AoA) Secretary and Clean Water Board Chair
Ted Brady, Agency of Commerce and Community Development (ACCD) Deputy Secretary on behalf of Lindsay Kurrle ACCD Secretary
Robert Flint, public member
Joe Flynn, Agency of Transportation (VTrans) Secretary
James Giffin, public member
Christopher Louras, public member (absent)
Julie Moore, Agency of Natural Resources (ANR) Secretary
Anson Tebbetts, Agency of Agriculture, Food and Markets (AAFM) Secretary
Chad Tyler, public member

Attendees:
Jill Arace, Vermont Association of Conservation Districts
Charlie Baker, Chittenden County Regional Planning Commission
Geoff Batista, Office of the State Auditor
Emily Bird, Department of Environmental Conservation (DEC)
Eric Blatt, DEC
Katelyn Bockwoldt, DEC
Emily Byrne, ANR
Jeff Cook, AAFM
Jennifer Hollar, Vermont Housing and Conservation Board
Neil Kamman, DEC
Robert Lehmert
Robert Mann
Michael Middleman, AoA
Mary Russ, White River Partnership

1. **Welcome, Overview of Agenda**
   Secretary Young reviewed the agenda. No action taken.

2. **Clean Water Fund Operating Statement**
   Secretary Moore presented the Clean Water Fund Operating Statement for the Board's information and input. No action taken.

3. **SFY 2021 Clean Water Budget**
   Secretary Moore presented the final SFY 2021 Governor's recommended clean water budget and summary of the SFY 2018-2021 clean water budget. No action taken.

4. **Clean Water Service Provider Selection Process Update (Act 76 of 2019)**
   Department of Environmental Conservation Water Investment Division Director Neil Kamman presented the request for proposals for the Selection of Clean Water Service Providers for Seven Vermont Watershed Basins per Act 76 of 2019. No action taken.

5. **SFY 2022 Clean Water Budget**
   Department of Environmental Conservation Clean Water Initiative Program Manager Emily Bird proposed a clean water budget process for the FY22 budget and further updated the budget priorities for FY22 established by the legislature in Act 76 of 2019. No action taken.

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6. Clean Water Fund Program Audit due January 15, 2021

Secretary Young updated the board on the status of the Clean Water Fund Program Audit RFP and indicated it is in the final review stage, with a goal to release next week and proposals submitted in the following 3-5 weeks. No action taken.

7. Vermont Clean Water Initiative 2019 Performance Report

Program Manager Emily Bird presented the Vermont Clean Water Initiative Performance Report, a results-based accountability report for Vermont's clean water funding that fulfills both state and federal reporting requirements. No action taken.

8. Public Comments

Secretary Young welcomed input from the public.

- Comment from Jill Arace: Thank you to DEC (Neil Kamman, Chris Rottler, Ethan Swift) for the open, collegial, and free-flowing dialogue within Act 76 Advisory Committee. We also want to express appreciation for the stellar Performance Report. Reporting structures among agencies are becoming more consistent, which is appreciated by external organizations. Also, please be aware of the Vermont Agricultural Water Quality Partnership (VAWQP) meeting on March 10. VAWQP plays a large role in agricultural efforts at the state and local level.
- Question from Robert Lehmert: There are 54,000 tons of commercial fertilizers imported to Vermont, and I presume a significant amount is phosphorus. Is this counterproductive to our efforts here, and should the Legislature be encouraged to look at this? Additionally, he asked if innovative techniques for capturing phosphorus from sewage/septic emerge, will they be considered?
    - Secretary Moore responded describing the Phosphorus Innovation Challenge. Further she indicated that there is one wastewater project part of the Phosphorus Innovation Challenge in Essex Junction that is looking at bio-sludge.

9. Next Steps, Closing Remarks

Secretary Young welcomed the Board's input and suggestions for making the FY22 budget more transparent and accessible, including what information is needed to better understand the process. Board members were encouraged to reach out to Secretary Young with suggestions or Emily Bird with questions.

10. Adjourn

Supporting Materials:

1. October 22, 2019 Draft Clean Water Board Meeting Minutes
2. Clean Water Fund Operating Statement
3. SFY 2021 Clean Water Budget (January 21, 2020 Governor Recommended)
4. SFY 2018-2021 Clean Water Budget Summary
5. Request for Proposals: Selection of Clean Water Service Providers for Seven Vermont Watershed Basins, per Act 76 of 2019
6. DRAFT SFY 2022 Clean Water Budget Process
7. Act 76 of 2019 Updated Clean Water Budget Priorities
8. Vermont Clean Water Initiative 2019 Performance Report
9. Clean Water Project Explorer Factsheet

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Clean Water Fund FY 2020 Supplemental Budget Adjustment Request May 6, 2020	FY 2020 As Passed Budget	FY 2020 Supplemental BAA Request	As Passed vs. Supplemental BAA
SOURCES			
Beginning Balance			
FY 2019 Unallocated/Unreserved Balance	1,571,273	1,571,273	
Contingency Reserve	450,000	450,000	
Total FY 2019 Ending Cash Balance	2,021,273	2,021,273	
FY 2020 Revenue	*Budget*	*Actuals Through 4/30/2020*	
Clean Water Surcharge	5,460,000	4,230,712	(1,229,288)
Escheats	970,000	1,125,059	155,059
Meals and Rooms Tax	7,500,000	5,926,516	(1,573,484)
Interest Income	-	79,818	79,818
Subtotal FY 2020 Revenue	13,930,000	11,362,105	(2,567,895)
May and June Estimates - updated based on consensus estimates on 4/29/2020			
Clean Water Surcharge		619,737	
Escheats		(155,060)	
Meals and Rooms Tax		67,007	
Subtotal Q4 Estimates		*531,685*	
Total Earned and Estimated Sources	**15,951,273**	**13,915,063**	
Less Transfers			
Agriculture Clean Water Fund	3,255,000	3,255,000	
Lakes in Crisis Fund	50,000	50,000	
Remaining Available	**12,646,273**	**10,610,063**	
USES			
FY 2020 Appropriations			
DEC	10,375,000	10,375,000	
ACCD	200,000	200,000	
VTRANS	770,000	770,000	
AOA	150,000	150,000	
Total Appropriations	11,495,000	11,495,000	
Projected Over Budget		**(884,937)**	
Unobligated Funds - to be reverted			
Vtrans			
Underruns/ Cancellations		(117,485)	
ACCD			
Unobligated Better Connections funds		(100,000)	
DEC			
Unobligated "Natural Resources Restoration" Funds		(43,143)	
Unobligated "Multi-sector innovation, DEC and Partner Support" Funds		(40,560)	
3 acre permit finance program development shifted FY 2021		(251,747)	
Shift portion of Phase 2 Phosphorous Innovation Challenge to FY 2021		(315,110)	
LaRosa/VAEL analytics shifted to FY 2021		(100,000)	
Subtotal DEC		*(750,560)*	
Total Unobligated Funds		(968,045)	
Projected Fund Balance	**1,151,273**	**83,108**	

VERMONT

Department of Buildings & General Services
Office of Purchasing & Contracting
109 State Street [phone] 802-828-2211
Montpelier VT 05609-3001 [fax] 802-828-2222
http://bgs.vermont.gov/purchasing

SEALED BID

REQUEST FOR PROPOSAL

Performance Audit of Clean Water Fund

ISSUE DATE:	**Tuesday, March 10, 2020**	
BIDDERS' CONFERENCE:	**There will be no bidders' conference**	
QUESTIONS DUE BY:	**Monday, March 23, 2020**	**3:00 PM**
	(answers anticipated, but not assured, on or about Monday, March 30)	
RFP RESPONSES DUE BY:	**Wednesday, April 22, 2020**	**2:00 PM**

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND ADDENDUMS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:

http://www.bgs.state.vt.us/pca/bids/bids.php

THE STATE WILL MAKE NO ATTEMPT TO CONTACT INTERESTED PARTIES WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH BIDDER TO PERIODICALLY CHECK THE ABOVE WEBPAGE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND ADDENDUMS ASSOCIATED WITH THIS RFP.

STATE CONTACT: **Trevor R. Lewis, State Commodity Procurement Administrator**
TELEPHONE: **(802) 828-2217**
E-MAIL: **Trevor.R.Lewis@vermont.gov**
FAX: **(802) 828-2222**

1. **OVERVIEW:**

1.1. **SCOPE AND BACKGROUND:** Through this Request for Proposal (RFP) the State of Vermont Agency of Administration (hereinafter the "State") is seeking to establish contracts with one or more companies that can provide a Performance Audit of the Clean Water Fund, in accordance with 10 V.S.A. § 1389b. https://legislature.vermont.gov/statutes/section/10/047/01389b

1.2. **CONTRACT PERIOD:** Contracts arising from this RFP will be for a period of one year with an option to renew for up to one additional one-year period. The State anticipates the start date will be as soon as practicable.

1.3. **SINGLE POINT OF CONTACT:** All communications concerning this RFP are to be addressed in writing to the State Contact listed on the front page of this RFP. Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.

1.4. **BIDDERS' CONFERENCE:** There will be no bidders' conference.

1.5. **QUESTION AND ANSWER PERIOD:** Any bidder requiring clarification of any section of this RFP or wishing to comment on any requirement of the RFP must submit specific questions in writing no later than the deadline for question indicated on the first page of this RFP. Questions may be e-mailed to the point of contact on the front page of this RFP. Questions or comments not raised in writing on or before the last day of the question period are thereafter waived. At the close of the question period a copy of all questions or comments and the State's responses will be posted on the State's web site http://www.bgs.state.vt.us/pca/bids/bids.php Every effort will be made to post this information as soon as possible after the question period ends, contingent on the number and complexity of the questions.

2. **DETAILED REQUIREMENTS/DESIRED OUTCOMES:**

The State prefers, but is not strictly limited to selecting, a single bid, covering the entire scope, referred to in this RFP as ***Scope of Work, Part 1: Conduct an Independent Program Audit of the Clean Water Fund (10 V.S.A. §§ 1389b(a)(1) – (3), (6)) and Scope of Work, Part 2: Assess Capacity of State Government to Effectively Administer and Enforce Agricultural Water Quality Regulatory Requirements (10 V.S.A. §§ 1389b(a)(4) – (5)),***

from a single bidder. However, the State recognizes that some of the distinct areas of subject matter involved in the two scopes of work in this RFP require different particular skillsets that may not all be possessed in full by a single individual or a single organization.

If a bidder proposes to meet the various required skillsets by an arrangement involving a prime contractor and one or more subcontractors, the prime contractor must be the bidder, but the prime contractor's bid must very clearly identify any and all subcontractors, must clearly describe how scope, roles, and responsibilities will be allocated among all entities, and must provide a substantiation of the specific relevant experience and qualifications of both the prime contractor and any/all subcontractors. Similarly, if a bidder proposes to meet the various required skillsets by some form of joint venture, the bidder must very clearly explain the proposed entity type and structure of joint venture in detail, must very clearly identify any/ all participants in the joint venture, must clearly describe how scope, roles, and responsibilities will be allocated among and across entities, and must provide a substantiation of the specific relevant experience and qualifications of any/ all participants in the proposed joint venture.

The State reserves the right, in its sole discretion, to award separate sub-portions of the scope of work covered by this RFP to separate bidders. The State reserves the right, in its sole discretion, to use the Best and Final Offer ("BAFO") process (as described elsewhere within this RFP) to explore and negotiate such a potential award of different sub-portions of the scope of work covered by this RFP to separate bidders, but the State's ability to explore and negotiate multiple awards in that manner shall not be limited to the BAFO process, nor shall the BAFO process be limited to the potential allocation of work across multiple bidders..

Vermont statutes, at 10 V.S.A. § 1389b, sub-sections (a) & (b), require:

> *CLEAN WATER FUND AUDIT*
>
> *(a) On or before January 15, 2021, the Secretary of Administration shall submit to the House and Senate Committees on Appropriations, the Senate Committee on Finance, the House Committee*

on Ways and Means, the Senate Committee on Agriculture, the House Committee on Agriculture and Forest Products, the Senate Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water Resources a program audit of the Clean Water Fund. The report shall include:

> *(1) a summary of the expenditures from the Clean Water Fund, including the water quality projects and programs that received funding;*
> *(2) an analysis and summary of the efficacy of the water quality projects and programs funded from the Clean Water Fund or implemented by the State;*
> *(3) an evaluation of whether water quality projects and programs funded or implemented by the State are achieving the intended water quality benefits;*
> *(4) an assessment of the capacity of the Agency of Agriculture, Food and Markets (AAFM) to effectively administer and enforce agricultural water quality requirements on farms in the State;*
> *(5) an assessment of the capacity of the Department of Environmental Conservation (DEC) to effectively administer and enforce agricultural water quality requirements on farms in the State; and*
> *(6) a recommendation of whether the General Assembly should authorize the continuation of the Clean Water Fund and, if so, at what funding level.*

(b) The audit required by this section shall be conducted by a qualified, independent environmental consultant or organization with knowledge of the federal Clean Water Act, State water quality requirements and programs, the Lake Champlain Total Maximum Daily Load plan, and the program elements of the State clean water initiative.

The Agency of Administration is seeking one or more qualified, independent environmental consultant(s) or organization(s) (hereinafter, "consultant") to conduct this performance audit. The consultant(s) shall have knowledge of the Federal Clean Water Act, state water quality requirements and programs, the Phosphorus Total Maximum Daily Loads (TMDLs) for Vermont Segments of Lake Champlain (i.e., Lake Champlain TMDL) and attendant implementation plan, other large-scale watershed management programs across the country that are similarly dominated by non-point source pollution control work, as well as the program elements of the interagency Vermont Clean Water Initiative as detailed in the annual *Clean Water Investment Report*[1] produced by the State of Vermont, available at https://dec.vermont.gov/water-investment/cwi/projects#Reports. The consultant(s) must have relevant technical and performance measurement and data management expertise necessary to complete this performance audit.

Bidders must, as part of their bid submission, disclose, clearly and with specificity, any involvement that any bidder(s)' organization(s), or that any individual(s) within any bidder(s)' organization(s) have had, directly or indirectly, in projects receiving funding from the Clean Water Fund. The State will consider such involvement in relation to the potential for an Organizational Conflict of Interest (OCOI), which shall be defined as:

> Organizational conflict of interest (OCOI) means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the work is or might be otherwise impaired, or a person has an unfair competitive advantage, or there is a substantial risk that information gained by the person during the course of the work (if awarded the work) could be used against the State, or used for or against other parties, in other matters in a manner that would give the person an unfair advantage in those other matters.

It shall be a condition precedent to the submittal of any bid(s) that the bidder(s) recognize and fully and unconditionally consent that the determination of the existence, extent, or seriousness of OCOI, and of whether an OCOI can or cannot adequately be avoided or mitigated, is a matter for the sole discretion of the State.

The selected consultant(s) will work with an interagency team, including representatives from the Agency of Administration appointed by the Secretary, and subject matter experts appointed by the Secretaries of the

[1] The Clean Water Investment Report is titled "Vermont Clean Water Initiative Annual Investment Report" for reporting periods of State Fiscal Year (SFY) 2016-2018 and is titled "Vermont Clean Water Initiative Annual Performance Report" for reporting period SFY 2019.

Agency of Agriculture, Food & Markets and the Secretary of the Agency of Natural Resources throughout the process. There shall be a minimum of five such SME team "touch points" for the following purposes:

1) Introductory meeting with audit team to review audit scope and identify document and data relevant and necessary to the audit

2) transmittal and review of existing documentation and datasets;

3) review of draft audit report and recommendations;

4) review State's comments to draft audit; and recommendations; and

5) delivery and presentation of final report

The final audit must be provided to the Secretary of Administration no later than December 20, 2020 for submission to the General Assembly no later than January 15, 2021; additional incremental time requirements, prior to December 20, 2020, are set forth in detail in subsequent portions of this RFP.

Work product ownership: Upon full payment by the State, all products of the contractor'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 contractor.

Scope of Work, Part 1:
Conduct an Independent Program Audit of the Clean Water Fund (10 V.S.A. §§ 1389b(a)(1) – (3), (6)).

A. Review existing documentation related to (i) intended water quality benefits of projects and programs funded or implemented by the State and (ii) expenditures in and results of projects and programs funded or implemented by the state, as well as (iii) authorization, continuation, and funding levels of the Clean Water Fund.

   Documents that should be reviewed will include, but may not be limited to, the following:

   i. Planning documents and datasets *identifying intended water quality benefits of projects and programs funded or implemented by the state*:

      1. Lake Champlain Phosphorus TMDL and Vermont Lake Champlain Phosphorus TMDL Phase 1 Implementation Plan available at https://dec.vermont.gov/watershed/restoring/champlain
      2. Lake Memphremagog Phosphorus TMDL and Implementation Plan (i.e., Lake Memphremagog Tactical Basin Plan) available at https://dec.vermont.gov/water-investment/watershed-planning/tactical-basin-planning/basin17
      3. Vermont Tactical Basin Plans for each of Vermont's Tactical Basin Planning watersheds available at https://dec.vermont.gov/water-investment/watershed-planning
      4. Watershed Projects Database containing water quality improvement projects identified through Tactical Basin Planning available at https://anrweb.vt.gov/DEC/cleanWaterDashboard/WPDSearch.aspx; also searchable through the Clean Water Project Explorer by selecting project status "Potential Projects" available at https://anrweb.vt.gov/DEC/CleanWaterDashboard/ProjectExplorer.aspx
      5. Progress Report on River Basin Water Quality Management Planning (Tactical Basin Planning) During 2019 available at https://dec.vermont.gov/water-investment/watershed-planning/tactical-basin-planning

   ii. Reports and datasets summarizing expenditures in and results of *water quality projects and programs funded from the Clean Water Fund or implemented by the State*:

      1. Lake Champlain TMDLs Accountability Framework Report Card from EPA (April 2018) and Lake Champlain TMDLs Accountability Framework Interim Report Card from EPA (February 2017) available at

https://dec.vermont.gov/watershed/restoring/champlain

2. Vermont Clean Water Initiative Investment Report, 2016, 2017, 2018, available at https://dec.vermont.gov/water-investment/cwi/projects#Reports
3. Vermont Clean Water Initiative Performance Report, 2019, available at https://dec.vermont.gov/water-investment/cwi/projects#Reports, including:
    a. Interim TMDL Implementation Status for the Lamoille River (Appendix B) and Missisquoi Bay (Appendix C) Watersheds
    b. Summary of Methods used to Estimate Pollutant Reductions (Appendix F) (more robust documentation under development as required by Act 76 of 2019)
4. Clean Water Reporting Framework (CWRF) data summary reports and raw data used to generate above listed Investment and Performance Reports, to be provided to selected contractor upon request; projects contained in CWRF are also searchable through the Clean Water Project Explorer by selecting project statuses "Projects in Progress" and "Completed Projects" available at https://anrweb.vt.gov/DEC/CleanWaterDashboard/ProjectExplorer.aspx

iii. Reports summarizing long term funding and financing needs to meet State of Vermont water quality requirements, *pertinent to authorization and continuation of the Clean Water Fund and funding levels*, available at https://dec.vermont.gov/water-investment/cwi/board under "Other Legislative Reports":

1. State of Vermont Office of the State Treasurer Clean Water Report Required by Act 64 of 2015, 2017
2. Report of the Working Group on Water Quality Funding 2017 Act 73, Section 26, 2017
3. Report on Federal Funding Related to Water Quality Improvement Efforts in Vermont, 2017, 2018, 2019

B. Review expenditures from the Clean Water Fund, including the water quality projects and programs that received funding.

C. Analyze and summarize the efficacy of the water quality projects and programs funded from the Clean Water Fund or implemented by the state.

i. Evaluate results of the projects and programs funded and/or completed from the Clean Water Fund or implemented by the State since SFY 2016 in regard to: (1) project output metrics statewide and (2) project-level estimated phosphorous pollution reductions in Lake Champlain and Lake Memphremagog, where applicable and quantifiable.

ii. Evaluate the efficacy of State of Vermont agencies' clean water data, data management systems, and pollution accounting methodologies in quantifying results of Clean Water Fund investments, including assessment of improvements made between 2016 and the present to State of Vermont tracking systems. Make recommendations on specific areas to focus development and documentation of pollution accounting methodologies required by Act 76 of 2019, as appropriate.

D. Evaluate whether water quality projects and programs funded or implemented by the state are achieving the intended water quality benefits.

i. Recommend any modifications in current measurement tools or new measurement tools to more effectively track progress toward water quality goals as established in the Lake Champlain TMDL, Lake Memphremagog TMDL, Act 64 of 2015, and Act 76 of 2019, including establishment of benchmarks and targets for measuring incremental progress, as required by Act 76 of 2019 and Phase 3 Tactical Basin Plans (in progress).

ii. Evaluate and recommend any rebalancing the proportion of dollars being invested in the steps of a typical project life cycle to optimize priority project delivery, including: planning and assessment; project design and engineering; project implementation and construction;

operation and maintenance; monitoring; education, outreach and technical assistance; and, research and innovation.

E. Recommend whether the General Assembly should authorize continuation of the Clean Water Fund, and if so, at what funding level.

Scope of Work, Part 2:
Assess Capacity of State Government to Effectively Administer and Enforce Agricultural Water Quality Regulatory Requirements (10 V.S.A. §§ 1389b(a)(4) – (5)).

A. Assess the capacity of state government, including resources currently housed within the Agency of Agriculture, Food and Markets (AAFM) and the Agency of Natural Resources Department of Environmental Conservation (ANR-DEC), to effectively administer and enforce agricultural water quality regulatory requirements on Vermont farms. Recommend any modifications in the current structure that would support more effective administration and enforcement of agricultural water quality requirements on farms. Evaluation should address at least:

(1) ability of programs to meet statutorily or delegated required inspection quantity and/or timeframes

(2) ability of the programs to meet statutorily and delegated permitting requirements including those delegated by the Clean Water Act

(3) timeliness in investigating complaints and/or referrals to gather sufficient evidence for enforcement,

(4) ability of inspectors to adequately document and make determinations on water quality violations on farm visits for enforcement;

(5) adequacy of enforcement activities to remedy water quality violations in a timely manner and deter future water quality violations;

(6) assessment of compliance with the MOU for point and non-point source discharges, and

(7) adherence to transparency and communication policies established between Agencies (LEAN policy).

B. The Assessment referenced at "A," immediately above, will require the selected bidder(s) to review materials that will include, but not be limited to, materials that, as of the time of contractor's review, are confidential and exempt from disclosure under the Vermont Public Records Act. The State may require the selected bidder to enter into a Confidentiality Agreement substantially similar to the Confidentiality Agreement contains as Appendix 1.

Illustrative (but not exclusive) examples of types of information and information sources that selected bidder(s) will be available and relevant to the review are contained in Appendix 2 at the end of this RFP.

Each of the above Appendices to this RFP is illustrative and not exclusive, and it is a condition of any bid(s) that such illustrative and not exclusive nature of such Appendices is accepted by bidder(s).

C. Based on the findings of the program evaluation, develop recommendations to:

(1) optimize cost effectiveness of future Clean Water Fund investments;

(2) establish interim targets to assess future progress meeting water quality goals, such as goals described in the Lake Champlain TMDL and Act 64 of 2015;

(3) establish targets for reporting future progress and to prioritize investments; and

(4) enhance clean water project data tracking and ability to quantify project results.

D. Present the results of the program audit in the form of a final written report to the Agency of Administration.

Staging of Work: The preferred approach is for Part 1 and Part 2 of the Scope of work to proceed concurrently and in parallel.

Work Plan/Timeline:

Submissions shall include a comprehensive work plan to address the components of the Scopes of Work including the specific elements to be performed, their schedule and frequency, and the bidder's proposed schedule for payments in relation to stages and deliverables. The proposal shall discuss any anticipated problem areas and proposed solutions. The workplan/timeline should include a time frame for completion of tasks between June 1 and following deadlines:

June 1, 2020	Introductory meeting with Audit team and state representatives
November 15, 2020	Submission of draft audit report and recommendations to Secretary of Administration;
December 1, 2020	Receive State comments on initial comment draft,
December 12, 2020	Provide State Secretary of Administration with a revised comment draft
December 20, 2020	Submission of final report to Secretary of Administration
December 31, 2020	Receive State instruction to return and/or destroy confidential information, and certify same to State in writing

[At State's option: follow-up work which may include but not be limited to Legislative testimony]

3. **GENERAL REQUIREMENTS:**

3.1. **PRICING:** Bidders must price the terms of this solicitation at their best pricing. Any and all costs that Bidder wishes the State to consider must be submitted for consideration. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored. All equipment shall be delivered assembled, serviced, and ready for immediate use, unless otherwise requested by the State.

3.1.1. Prices and/or rates shall remain firm for the initial term of the contract. The pricing policy submitted by Bidder must (i) be clearly structured, accountable, and auditable and (ii) cover the full spectrum of materials and/or services required.

3.1.1.1. Bidders must propose a bottom line, not to exceed, all-inclusive, firm-fixed-price for their work on the project up to and including the final report.

3.1.1.2. Any and all pricing of any type for any work that is to result from this RFP must be inclusive of travel and expenses and any other costs.

3.1.1.3. Bidders are particularly encouraged to provide, as part of their bid, a proposed set of payment increments, and associated dates, stages, milestones, and/or interim deliverables that define those proposed payment increments, prior to and as of the delivery of the final report. It is an expectation and a requirement that a very substantial portion of the overall payment amount will be tied to, and follow, the delivery of the final report. The State reserves the right to negotiate and/or require dates and payment increments different from those proposed by any bidder.

3.1.1.4. Bidders should also provide firm hourly pricing for optional (at the State's discretion) post-report support, which may include but not necessarily be limited to, Legislative testimony.

3.2. **Retainage.** In the discretion of the State, a contract resulting from this RFP may provide that the State withhold a percentage of the total amount payable for some or all deliverables, such retainage to be payable upon satisfactory completion and State acceptance in accordance with the terms and conditions

of the contract. The State, in its sole discretion, may consider substantially end-weighted payments as an alternative to retainage.

3.3. **Disclosure Requirement:** Bidders must, as part of their bid submission, disclose, clearly and with specificity, any involvement that any bidder(s)' organization(s), or that any individual(s) within any bidder(s)' organization(s) have had, directly or indirectly, in projects receiving funding from the Clean Water Fund.

3.4. **BEST AND FINAL OFFER**:

3.4.1. **Best and Final Offer (BAFO).** At any time after submission of Responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the State may invite Bidder(s) to provide a BAFO.

3.4.1.1. The state reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.

3.4.1.2. The State reserves the right, in its sole discretion, to use the BAFO process to explore and negotiate a potential award of different sub-portions of the scope of work covered by this RFP to separate bidders, but the State's ability to explore and negotiate multiple awards in that manner shall not be limited to the BAFO process. The State has no obligation to do so. The State's use of the BAFO process is also in no way restricted to this potential exploration or negotiation of possible award of different sub-portions of the scope of work covered by this RFP to separate bidders; the BAFO process may cover any broader or other aspects of scope, approach, cost, or any other considerations. As noted elsewhere, the State's overall preference is most likely a single award in response to a single bid, but the direction and outcome are in the State's sole and final discretion.

3.4.2. **Evaluation of Responses and Selection of Bidder(s).** The State shall have the authority to evaluate Responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP.

3.5. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS**: In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.

3.5.1. Self Reporting: For bid amounts exceeding $250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

3.5.2. Subcontractor Reporting: For bid amounts exceeding $250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with 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). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list MUST be updated and provided to the State as additional subcontractors are hired. A sample form is available online at http://bgs.vermont.gov/purchasing-contracting/forms. **The subcontractor reporting form is not required to be submitted with the bid response.**

3.6. **EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS**:

For bid amounts exceeding $25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or

manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

3.7. **METHOD OF AWARD:** Awards will be made in the best interest of the State. The State may award one or more contracts and reserves the right to make additional awards to other compliant bidders at any time if such award is deemed to be in the best interest of the State. All other considerations being equal, preference will be given first to resident bidders of the state and/or to products raised or manufactured in the state, and then to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.

3.7.1. **Evaluation Criteria:** Consideration shall be given to the Bidder's project approach and methodology, qualifications and experience, ability to provide the services within the defined timeline, cost, and/or success in completing similar projects, as applicable, and to the extent specified below.

(0- 20 POINTS) Consulting team members with strong experience and expertise in environmental, regulatory, financial, data management, and performance measurement evaluation.

(0- 10 POINTS) Overall project cost

(0- 10 POINTS) Workplan and timeline

(0- 10 POINTS) References and work products

(0- 20 POINTS Representative project experience demonstrating working knowledge of types of programs and projects eligible for funding by the Clean Water Fund and experience demonstrating working knowledge of the types of enforcement processes performed by the Agencies

(0- 5 POINTS) Strong written and oral communication skills

(0- 20 POINTS) Full coverage of the totality of diverse skillsets involved, and, if a bid proposal involves more than one contractor (such as a prime contractor/subcontractor or joint venture arrangement), a clear structure as to roles and responsibilities, and inter-entity coordination, for the overall scope

(0- 5 POINTS) Demonstration of willingness and ability to maintain confidentiality of materials designated by State as confidential, including but not only demonstration of specific information security polic(ies) and practices that protect systems and processes and media that may contain State Data from internal and external security threats, and protect State Data from unauthorized disclosure.

TOTAL BASED ON ALL CRITERIA: 100 POINTS

PASS/ FAIL: Organizational Conflict of Interest ("OCOI"): After consideration of all other factors, the State will consider each bidder(s)' mandated disclosures of any involvement that any bidder(s)' organization(s), or that any individual(s) within any bidder(s)' organization(s) have had, directly or indirectly, in projects receiving funding from the Clean Water Fund.

The State will consider such involvement in relation to the potential for an Organizational Conflict of Interest (OCOI), which shall be defined as:

> Organizational conflict of interest (OCOI) means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the work is or might be otherwise impaired, or a person has an unfair competitive advantage, or there is a substantial risk that information gained by the person during the course of the work (if awarded the work) could be used against the State, or used for or against other parties, in other matters in a manner that would give the person an unfair advantage in those other matters.

It shall be a condition precedent to the submittal of any bid(s) that the bidder(s) recognize and fully and unconditionally consent that the determination of the existence, extent, or seriousness of OCOI, and of whether an OCOI can or cannot be successfully avoided or adequately mitigated, is a matter for the sole discretion of the State.

The State will consider, in its sole discretion, whether a bidder(s) other activities or relationships create an actual or potential OCOI. If the State, in its sole discretion, believes that there is or may

be an actual or potential OCOI, the State will identify any actions that could potentially be taken to adequately avoid or mitigate such OCOI. The State shall have the option, but no obligation, to confer with bidders, during the Best and Final Offer (BAFO) stage, or otherwise before a final award, as part of the State's determination of whether any OCOI can be successfully avoided or adequately mitigated. The State will award the contract to the apparent otherwise-successful bidder(s) unless an OCOI is determined to exist that cannot be successfully avoided or adequately mitigated. If the State in its sole discretion, determines that an OCOI cannot be successfully avoided or adequately mitigated, the State will proceed to apply the same OCOI determination and analyses to the next-most-successful bidder(s), until the State arrives at an acceptable bidder that is not disqualified on the basis of OCOI, provided, however, that in any instance and for any reason, including but not limited to OCOI, the State shall have total discretion to reject any and all bids.

3.7.2. **Presentations and/or Interviews:** Final presentations and/or interviews, if deemed necessary by the State will be on-site at the State in Montpelier, Vermont, or, at the State's choice, by conference call. Up to three finalists may be chosen according to the Schedule above from among the bidders to complete a demonstration of their capabilities. The bidder will be expected to demonstrate relevant expertise and provide examples of developed deliverables at the demonstration during the period listed in the Schedule. There will be no cost to the State for these presentations and/or interviews.

3.8. **STATEMENT OF RIGHTS:** The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Bidders may be asked to give a verbal presentation of their proposal after submission. 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 the State, the State 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. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State. The State further reserves the right to conform the selection process, award and/or proposed contract language at any time during the procurement process to comply with state or federal statute, regulation or grant requirement.

3.9. **CONTRACT TERMS:** The selected bidder(s) will be expected to sign a contract with the State, including the Standard Contract Form and Attachment C as attached to this RFP for reference. The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.

3.9.1. **PAYMENT TERMS:** All invoices are to be rendered by the Contractor on the vendor's standard billhead and forwarded directly to the institution or agency ordering materials or services and shall specify the address to which payments will be sent. Payment terms are Net 30 days from receipt of an error-free invoice with all applicable supporting documentation. Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

4. **CONTENT AND FORMAT OF RESPONSES:** The content and format requirements listed below are the minimum requirements for State evaluation. These requirements are not intended to limit the content of a Bidder's proposal. Bidders may include additional information or offer alternative solutions for the State's consideration. However, the State discourages overly lengthy and costly proposals, and Bidders are advised to include only such information in their response as may be relevant to the requirements of this RFP.

4.1. **NUMBER OF COPIES**:

4.1.1. Submit an unbound original (clearly marked as such) and twelve (12) paper copies and one digital copy in PDF and/or Microsoft Word or other standard Microsoft Office product formats on USB flash drive.

4.1.2. The bid should include a Cover Letter and Technical Response and a separate Pricing Response.

4.2. **COVER LETTER:**

4.2.1. Confidentiality. To the extent your bid contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).

4.2.2. The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under the State's Public Records Act, 1 V.S.A. § 315 et seq., the bidder shall submit a cover letter that clearly identifies each page or section of the response that it believes is proprietary and confidential. The bidder shall also provide in their cover letter a written explanation ***for each marked section*** explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, the bidder must include a redacted copy of its response for portions that are considered proprietary and confidential. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response be marked confidential, and the State reserves the right to disqualify responses so marked.

4.2.3. Exceptions to Contract Terms and Conditions. If the bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State. Note that exceptions to contract terms may cause rejection of the proposal.

4.3. **BACKGROUND AND EXPERIENCE.** Provide details concerning the form of business organization, company size and resources; describe particular experience relevant to the proposed project, and list all current or past State projects.

4.4. If a Bidder intends to use subcontractors, the Bidder must identify in the proposal the names of the subcontractors, the portions of the work the subcontractors will perform, and address the background and experience of the subcontractor(s), as above.

4.5. **WORK PLAN/ TIMELINE:** Submissions shall include a comprehensive work plan to address the components of the Scope of Work (see Attachment A) including the specific elements to be performed, their schedule and frequency, and the bidder's proposed schedule for payments in relation to stages and deliverables. This should include a realistic timeline for deliverables. The submission shall also discuss any anticipated problem areas and proposed solutions.

4.6. **EXAMPLE WORK PRODUCT:** Submission should include a representative sample of work product such as reports, presentations, or other documentation.

4.7. **REFERENCES.** Provide the names, addresses, and phone numbers of at least three companies with whom the bidder has transacted similar business in the last 12 months. A bidder must include contact names who can talk knowledgeably about performance.

4.8. **PRICE AND PRICING STRUCTURE:** Bidders must provide specific firm fixed price proposals that specifically follow the approach, and provide the information, specified above in Section 3.1 and each of its sub-sections. All proposed pricing shall be clearly and succinctly provided in a single specific area of a bidder's proposal.

4.9. **DISCLOSURE REQUIREMENT:** Bidders must, as part of their bid submission, disclose, clearly and with specificity, any involvement that any bidder(s)' organization(s), or that any individual(s) within any bidder(s)' organization(s) have had, directly or indirectly, in projects receiving funding from the Clean Water Fund.

4.10. **CERTIFICATE OF COMPLIANCE:** This form must be completed and submitted as part of the response for the proposal to be considered valid.

5. **SUBMISSION INSTRUCTIONS:**

5.1. **CLOSING DATE:** Bids must be received by the due date and at the location specified on the front page of this RFP.

5.2. The bid opening will be held at **109 State Street, Third Floor, Montpelier, VT** and is open to the public.

5.3. **SECURITY PROCEDURES: Please be advised extra time will be needed when visiting and/or delivering information to 109 State Street. All individuals visiting 109 State Street must present a valid government issued photo ID when entering the facility.**

5.4. **SEALED BID INSTRUCTIONS:** All bids must be sealed and must be addressed to the State of Vermont, Office of Purchasing & Contracting, **109 State Street – Third Floor, Montpelier, VT 05609-3001**. BID ENVELOPES MUST BE CLEARLY MARKED 'SEALED BID' AND SHOW THE REQUISITION NUMBER AND/OR PROPOSAL TITLE, OPENING DATE AND NAME OF BIDDER.

5.4.1. All bidders are hereby notified that sealed bids must be received and time stamped by the Office of Purchasing & Contracting located at **109 State Street – Third Floor, Montpelier, VT 05609-3001** - by the time of the bid opening. Bids not in possession of the Office of Purchasing & Contracting at the time of the bid opening will be returned to the bidder, and will not be considered. **Any delay deemed caused by Security Procedures and courier/mail delivery service will be at the bidder's own risk.**

5.4.2. Office of Purchasing & Contracting may, for cause, change the date and/or time of bid openings or issue an addendum. If a change is made, the State will make a reasonable effort to inform all bidders by posting at: http://www.bgs.state.vt.us/pca/bids/bids.php

5.4.3. All bids will be publicly opened. Typically, the Office of Purchasing & Contracting will open the bid, read the name and address of the bidder, and read the bid amount. However, the Office of Purchasing & Contracting reserves the right to limit the information disclosed at the bid opening to the name and address of the bidder when, in its sole discretion, the Office of Purchasing & Contracting determines that the nature, type, or size of the bid is such that the Office of Purchasing & Contracting cannot immediately (at the opening) determine that the bids are in compliance with the RFP. As such, there will be cases in which the bid amount will not be read at the bid opening. Bid openings are open to members of the public. Bid results are a public record however, the bid results are exempt from disclosure to the public until the award has been made and the contract is executed.

5.5. **DELIVERY METHODS:**

5.5.1. SECURITY PROCEDURES: Note that security procedures concerning delivery of any mail or parcels to 109 State Street may delay receipt of mail/parcel pieces by one business day.

5.5.2. U.S. MAIL: Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by the Office of Purchasing & Contracting prior to the time of the bid opening.

5.5.3. EXPRESS DELIVERY: If bids are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received and time stamped by the Office of Purchasing & Contracting. **Due to security procedures express deliveries must be received by 10:30 AM in order to be received by the Office of Purchasing & Contracting that same day.**

5.5.4. HAND DELIVERY: Hand carried bids shall be delivered to a representative of the Office of Purchasing & Contracting prior to the bid opening.

5.5.5. ELECTRONIC: Electronic bids **will not** be accepted

5.5.6. FAX BIDS: Faxed bids **will not** be accepted.

6. **ATTACHMENTS:**

6.1. Standard State Contract Form

6.2. Attachment C: Standard State Contract Provisions (December 15, 2017)

6.3. Certificate of Compliance

6.4. Worker Classification Compliance Requirement; Subcontractor Reporting Form

7. APPENDICIES:

7.1. Appendix 1: Form of Confidentiality Agreement

7.2. Appendix 2: Illustrative types information relevant to the scopes of work that will be available to the selected consultant(s) (this is intended to be illustrative and not exclusive)

STANDARD CONTRACT FOR SERVICES

1. ***Parties.*** This is a contract for services between the State of Vermont, Agency of Administration (hereinafter called "State"), and _____, with a principal place of business in _____, (hereinafter called "Contractor"). Contractor's form of business organization is _____. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. ***Subject Matter.*** The subject matter of this contract is services generally on the subject of a Performance Audit of Vermont's Clean Water Fund. Detailed services to be provided by Contractor are described in Attachment A.

3. ***Maximum Amount***. In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed $_____.00.

4. ***Contract Term.*** The period of Contractor's performance shall begin on _____, 20__ and end on _____, 20__.

5. ***Prior Approvals.*** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. ***Amendment.*** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. ***Termination for Convenience.*** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. ***Attachments***. This contract consists of ___ pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)

Attachment D – Confidentiality Agreement (which may resemble "Appendix 1" to this RFP)

9. ***Order of Precedence***. Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

(1) Standard Contract
(2) Attachment C (Standard State Provisions for Contracts and Grants)
(3) Attachment A
(4) Attachment B
(5) Attachment D Confidentiality Agreement (which may resemble "Appendix 1" to this RFP)

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

Date: _____

Signature: _____

Name: _____

Title: _____

By the Contractor:

Date: _____

Signature: _____

Name: _____

Title: _____

ATTACHMENT A – STATEMENT OF WORK

The Contractor shall: c*onduct an Independent Program Audit of the Clean Water Fund:*

[THE SCOPE OF THE CONTRACT THAT IS EXPECTED TO RESULT FROM THIS RFP WILL LARGELY BE INFORMED BY THE SCOPE AS DEFINED WITHIN THE RFP ITSELF, BUT MAY BE FURTHER INFORMED BY ADDITIONAL INFORMATION OR CONSIDERATIONS THAT THE STATE LEARNS OR CONSIDERS SUBSEQUENT TO THE RFP, INCLUDING BUT NOT LIMITED TO WHAT THE STATE MAY LEARN OR CONSIDER IN REVIEWING BIDS AND NEGOTIATING WITH BIDDERS]

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
    a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
    b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: _____
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows: _____

    [THE STAGING OF PAYABLES IS EXPECTED TO LARGELY BE INFORMED BY THE INCREMENTS OF MAJOR DELIVERABLES AS DEFINED WITHIN THE RFP, WITH SOME SUBSTANTIAL DEGREE OF END-LOADING IN ORDER TO UNDERSCORE THE IMPORTANCE OF SCHEDULE AND FINAL DELIVERABLES, BUT MAY BE FURTHER INFORMED BY ADDITIONAL INFORMATION OR CONSIDERATIONS THAT THE STATE LEARNS OR CONSIDERS SUBSEQUENT TO THE RFP, INCLUDING BUT NOT LIMITED TO WHAT THE STATE MAY LEARN OR CONSIDER IN REVIEWING BIDS AND NEGOTIATING WITH BIDDERS]

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)

CERTIFICATE OF COMPLIANCE

For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.

A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.

B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.

C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?

____ Yes ____ No

D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds $250,000.00.

Self-Reporting. Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

Subcontractor Reporting. Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will 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), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

E. **Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification**

Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):

1. Bidder owns, leases or utilizes, for business purposes, space that has received:
   - ❑ Energy Star® Certification
   - ❑ LEED®, Green Globes®, or Living Buildings Challenge℠ Certification
   - ❑ Other internationally recognized building certification:

_____

2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:

_____

3. Please Check all that apply:
   - ❑ Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
   - ❑ Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
   - ❑ Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
   - ❑ Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? _____
   - ❑ Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
   - ❑ Bidder offers employees an option for a fossil fuel divestment retirement account.
   - ❑ Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:

_____

_____

4. Please list any additional practices that promote clean energy and take action to address climate change:

_____

_____

_____

F. Acknowledge receipt of the following Addenda:

Addendum No.:_____ Dated:_____

Addendum No.:_____ Dated:_____

Addendum No.:_____ Dated:_____

Bidder Name: _____ Contact Name: _____

Address: _____ Fax Number: _____

_____ Telephone: _____

_____ E-Mail: _____

By: _____ Name: _____
Signature of Bidder (or Representative) (Type or Print)

END OF CERTIFICATE OF COMPLIANCE

RFP/PROJECT:
DATE:

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

Subcontractor Reporting Form

This form must be completed in its entirety and submitted prior to contract execution and updated as necessary and provided to the State as additional subcontractors are hired.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding $250,000.00 requires bidders to comply with the following provisions and requirements.

Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured of workers. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

Subcontractor	Insured By		Subcontractor's Sub	Insured By

Date: _____

Name of Company: _____ Contact Name: _____

Address: _____ Title: _____

_____ Phone Number: _____

E-mail: _____ Fax Number: _____

By: _____ Name: _____

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form to: Office of Purchasing & Contracting
109 State Street
Montpelier, VT 05609-3001
Attention: Contract Administration

Appendix 1:
Illustrative Confidentiality Agreement

(this may be subject to refinement based on additional input from State counsel and/or as a product of dialogue with selected bidder(s))

CONFIDENTIALITY AGREEMENT

This Agreement for use and non-disclosure of Confidential Information ("Agreement") is entered into and effective this __ day of _____, 2020 by and between:

[CONTRACTOR]

and

The State of Vermont

Engagement: The Contractor, in the course of engagement by the State for Contract _____ on the subject of_____ (the "Contract"), may or will have access to or learn certain information belonging to the State that is confidential (Confidential Information).

Definition of Confidential Information: Confidential Information as used throughout this Agreement means documents designated by State as "Confidential" at the time of transmission to the vendor.

Limitation on Use: Contractor shall not disclose or cause to be disclosed any Confidential Information, directly or indirectly, or use it in any way, either during the term of this Agreement or at any time thereafter, except as required in the course of the performance of Contractor's obligations under this Agreement.

Ownership of Information: All files, records, documents, specifications, equipment, reports, publications, illustrations, and similar items relating to the subject matter of the Contract, whether prepared by Contractor or otherwise coming into Contractor's possession during the term of this Agreement, shall remain the exclusive property of the State.

Information Security: Before receiving or controlling Confidential Information, the Contractor will have an information security policy that protects its systems and processes and media that may contain Confidential Information from internal and external security threats and Confidential Information from unauthorized disclosure, and will have provided a copy of such policy to the State.

Treatment of Confidential Information: The Contractor agrees and acknowledges that Contractor must:

(a) use the Confidential Information only as may be necessary in the course of performing duties or exercising rights under the Contract;
(b) not obtain, or retain, any Confidential Information except to the extent required to perform the services under the Contract.
(c) not make any additional copies of the Confidential Information except upon the State's written authorization, signed by one of the State's authorized officers;
(d) provide at a minimum the same care to avoid disclosure or unauthorized use of Confidential Information as Contractor provides to protect its own similar confidential and proprietary information, except that the Contractor acknowledges and agrees that where the Contract or this Confidentiality Agreement set(s) standards higher than Contractors' own Standard, the highest standard shall govern;
(e) not publish, reproduce, or otherwise divulge any Confidential Information in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State, and only if that third party is also subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Agreement;
(f) take all reasonable precautions to protect the Confidential Information;
(g) not store, access, or transfer Confidential Information to, or from, any location outside the United States;
(h) not otherwise appropriate such information to its own use or to the use of any other person or entity;
(i) take reasonable measures as are necessary to restrict access to Confidential Information in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis for the specific purpose of Contractor's work for the State;

(j) treat any and all copies of, and notes, memoranda, analyses, compilations, abstracts, synopses, studies of other material produced from, the Confidential Information as Confidential Information;
(k) communicate only with the designated representatives of the State concerning Confidential Information;
(l) not use or disclose any Confidential Information for any purpose other than the purpose for which such information was provided in connection with the performance of the Contract, except as permitted by applicable law in the course of performing the Contract or as otherwise required by applicable law;
(m) not disclose to any person the fact that Confidential Information has been made available to Contractor or that Contractor has reviewed or has in its possession any Confidential Information, except as necessary to perform the Contract and as permitted by applicable law;
(n) comply with all applicable law regarding the security, handling, use and disclosure of Confidential Information (including, without limitation, all laws and regulations pertaining to Nonpublic Personal Information).

Return upon Termination of Contract: Upon termination of the Contract for any reason whatsoever, Contractor shall immediately deliver to State any and all Confidential Information (including without limitation any Deliverables for which State has made payment in whole or in part), that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time, and Contractor shall certify in writing to the State, that such full and complete return has been performed.

Employees and other entities: Contractor shall take appropriate measures to ensure that all employees, agents, and permitted subcontractors of Contractor comply with the provisions of this Agreement. Such measures shall include, but shall not be limited to, requiring all of Contractor's employees and/ or subcontractors, who have access to any of the material referred to above, to sign an agreement substantially similar to this Agreement.

Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request. In the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise Confidential Information (a "Security Breach"), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the Confidential Information used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

Obligations Continue Past Term: The obligations imposed on the Contractor shall continue with respect to every part of the Confidential Information, and every obligation hereunder, following the termination of the business relationship between the Contractor and the State, and such obligations shall not terminate until such unit shall cease to be secret and confidential and shall be in the public domain, unless such event placing information in the public domain shall have occurred as a result of wrongful conduct by the Contractor or the contractor's agents, servants, officers, or employees or a breach of the covenants set forth in this Agreement.

Notification to State of Other(s)' attempts to Obtain Confidential Information: The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order or otherwise defend any right it may have to maintain the confidentiality of its Confidential Information.

Specific Performance: The Contractor acknowledges and agrees that a breach of this Agreement would cause the State to suffer irreparable damage that could not be adequately remedied by an action at law. Accordingly, the Contractor agrees that the State shall have the right to seek specific performance of this Agreement to enjoin a breach or attempted breach of the provision thereof, such right being in addition to all other rights and remedies that are available to the State at law, in equity, or otherwise.

Severability: In case any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; and this Agreement shall, to the fullest extent possible, be reformed

and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part shall be reformed so that it would be valid, legal and enforceable to the maximum extent possible.

Governing Law, Jurisdiction and Venue: 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 that jurisdiction and venue for any action or proceeding regarding this Agreement.

Appendix 2:
Illustrative types information relevant to the scopes of work that will be available to the selected consultant(s)

(this is intended to be illustrative and not exclusive)

2017 Amended MOU between AAFM & ANR re: Implementation & Enforcement of Agricultural Water Quality WQ Programs https://agriculture.vermont.gov/sites/agriculture/files/documents/Water_Quality//MOU-between-ANR-%26-AFFM-Water-Quality-Enforcement-Programs.pdf

Background documentation of AAFM administration and enforcement of agricultural water quality requirements:

Enabling Statutory Language

10 V.S.A § 1259(i)

6 V.S.A. Chapter 215 – specifically, 6 V.S.A. Chapter 215 Subchapter 10: Enforcement

EPA Phase 1 Implementation Report Card & Agricultural Water Quality Requirements

https://www.epa.gov/sites/production/files/2019-05/documents/epa-april-2018-report-card-tmdl-implementation-progress.pdf

Relevant Agricultural Milestones, Year 1: 1, 2, 3, 4, 5, 6, 7, 16.

Relevant Agricultural Milestones, Year 2: 1, 2, 3, 9, 11, 12.

Act 64 of 2015 Charge for Agricultural Water Quality – Amendments to Required Agricultural Practices (RAPs) and AAFM Water Quality Enforcement

https://legislature.vermont.gov/Documents/2016/Docs/ACTS/ACT064/ACT064%20As%20Enacted.pdf

Regulatory Programs for the Agricultural Nonpoint Source Pollution Control Program

Required Agricultural Practices Rule:
https://agriculture.vermont.gov/sites/agriculture/files/documents/RAPFINALRULE12-21-2018_WEB.pdf

MFO (Medium Farm Operation) Rules

LFO (Large Farm Operation) Rules

FY2015 – FY2019 Annual Report on AAFM – ANR Water Quality Enforcement Program MOU

https://legislature.vermont.gov/assets/Legislative-Reports/2019-01-15-Annual-Report-on-AAFM-ANR-MOU.pdf

Annual AAFM Water Quality Enforcement Reports

https://agriculture.vermont.gov/water-quality/enforcement-compliance/enforcement-reports

Background documentation of ANR-DEC administration and enforcement of agricultural water quality requirements:

Enabling State and Federal Statutes:

10 V.S.A. §1259(a): https://legislature.vermont.gov/statutes/section/10/047/01259

10 V.S.A. § 1251 (3), (12), and (13): https://legislature.vermont.gov/statutes/section/10/047/01251

10 V.S.A. § 1263 (a) - (g): https://legislature.vermont.gov/statutes/section/10/047/01263

40 CFR 122.23: https://www.law.cornell.edu/cfr/text/40/122.23

40 CFR 412: https://www.law.cornell.edu/cfr/text/40/part-412

DEC enforcement's governing rules: https://dec.vermont.gov/enforcement/rules

Regulatory Documents:

Medium Concentrated Animal Feeding Operations (CAFO) General Permit: https://dec.vermont.gov/sites/dec/files/wsm/stormwater/docs/Agriculture/sw_finalsignedGP.pdf

DEC annual enforcement reports: https://dec.vermont.gov/enforcement/news

DEC enforcement final actions: https://dec.vermont.gov/enforcement/final

DEC enforcement proposed actions: https://dec.vermont.gov/enforcement/public-notice

Report of the Vermont State Auditor on DEC's Enforcement: https://auditor.vermont.gov/sites/auditor/files/documents/DEC%20-%20Environmental%20Compliance%20Report.pdf

Documents specific to inspection, investigation and enforcement matters:

AAFM Water Quality Enforcement Tracking sheets

Agricultural water quality complaints received by AAFM

Investigation Reports

Inspection Reports

Referrals to DEC and Attorney General's Office (AGO) and associated documentation

Communications tracking referrals and correspondence with DEC and AGO

Enforcement Actions issued by AAFM Water Quality and associated documentation

Enforcement Follow-Up Reports

Relevant procedures and policy documents

Staff calendar outputs for tracking visits, inspections and investigations

Annual Reports submitted by farms to AAFM to satisfy requirements of 6 V.S.A. Chapter 215

Reviews by Agency staff of submitted Annual Reports

Permit applications and permits issued by AAFM under the authority of 6 V.S.A. Chapter 215

DEC enforcement records, reports, photographs and narratives

DEC complaint intake forms: https://dec.vermont.gov/content/environmental-violation-report

DEC agricultural enforcement incident tracking spreadsheet

DEC annual enforcement reports: https://dec.vermont.gov/enforcement/news

DEC enforcement final actions: https://dec.vermont.gov/enforcement/final

DEC enforcement proposed actions: https://dec.vermont.gov/enforcement/public-notice

DEC Inspection reports, and associated records and materials

Staff calendar outputs for tracking visits, inspections and investigations

DEC Referrals to AGO and associated documentation

Communications regarding referrals and correspondence with AAFM and AGO

Assurances of Discontinuance and Administrative Orders for closed agricultural water quality cases

Comments on AAFM permit amendments

Comments on AAFM 2019 winter spreading ban exemption

Notes and materials from the 2017 ANR-AAFM Enforcement Lean Event