



Department of Buildings and General Services  
Office of Purchasing & Contracting  
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Montpelier VT 05609-3001 [fax] 802-828-2222  
<http://bgs.vermont.gov/purchasing>

*Agency of Administration*

**SEALED BID**  
**REQUEST FOR PROPOSAL**  
**ARCHITECTURAL SERVICES**  
**FOR THE**

**Correctional Facility Feasibility and Conceptual Design Study**  
**For the Department of Corrections**  
**State of Vermont**

**ISSUE DATE:** February 28, 2020  
**BIDDERS' CONFERENCE:** APRIL 8, 2020 @ 1:30 P.M.  
**QUESTIONS DUE BY:** APRIL 17, 2020 @ 1:00 P.M.  
**RFP RESPONSES DUE BY:** MAY 5, 2020 @ 2:00 P.M.

**PLEASE BE ADVISED THAT ALL PROJECT DOCUMENTS, NOTIFICATIONS, RELEASES, AND AMENDMENTS ASSOCIATED WITH THIS RFP WILL BE POSTED AT: <https://blueprintsetc.com/>**

**THE STATE WILL MAKE NO ATTEMPT TO CONTACT VENDORS WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH VENDOR TO PERIODICALLY CHECK <https://blueprintsetc.com/> FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THE RFP.**

**STATE CONTACT:** Michele Snyder, State Assistant Purchasing Agent  
**TELEPHONE:** (802) 828-5684  
**E-MAIL:** [BGS.OPCVendorDocs@vermont.gov](mailto:BGS.OPCVendorDocs@vermont.gov)  
**FAX:** (802) 828-2222

## CORRECTIONAL FACILITY FEASIBILITY AND CONCEPTUAL DESIGN STUDY

### 1. OVERVIEW:

- 1.1. **SCOPE AND BACKGROUND:** Through this Request for Proposal (RFP), the Office of Purchasing & Contracting (hereinafter the "State") is seeking to establish a contract with a qualified Architectural / Consulting / Planning firm that specializes in correctional facility planning and design to provide a feasibility study and conceptual design for the future inmate housing needs for the Vermont Department of Corrections (DOC). Interested firms are invited to bid on providing architectural/planning services described in Section 2 of this RFP.

Act 42, Section 28 of the 2019 Legislative session requires the General Assembly to work with the Council of State Governments (CSG) to assess the population trends, programming and the infrastructure needs for the State's correctional facilities. The CSG will review the population trends, programming and transitional services in the State's correctional facilities. The review may include an evaluation of the women's population in Vermont, the programming and services needed to meet their needs, the detention population, and barriers that exist to reduce the population in the State's correctional facilities. The Joint Legislative Justice Oversight Committee requires Buildings and General Services (BGS) and DOC to issue an RFP to contract with a consultant to provide a report that includes an evaluation of separate facilities in multiple-in-state locations, a campus style facility, and a combination of both (see the link [https://lifo.vermont.gov/assets/Meetings/Joint-Fiscal-Committee/2019-09-16/b9b408f8aa/2019\\_09\\_16\\_JFC\\_Minutes.pdf](https://lifo.vermont.gov/assets/Meetings/Joint-Fiscal-Committee/2019-09-16/b9b408f8aa/2019_09_16_JFC_Minutes.pdf) for the exact legislative language). The evaluation of these models shall include the effectiveness in terms of capacity, treatment/programming, operating and capital costs, and transitional supports needed for successful community re-integration

- 1.2. **CONTRACT PERIOD:** The State anticipates the start date will be July 1, 2020. The substantial completion date will be November 13, 2020 and contract completion date will be December 31, 2020.
- 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:** A **non-mandatory** bidder's conference will be held at **133 State Street, Montpelier, Vermont; Conference Room 021** on the date and time indicated on the front page of this RFP. Participants may attend remotely using the following conference call number **802-828-7228**, **conference number 921994837** or in person.
- 1.5. Documents may be obtained from **Blueprints, Etc.**, 20 Farrell Street, South Burlington, VT 05403, by phone at 802.865.4503, by fax at 802.865.0027 or email to: [orders@blueprintsetc.com](mailto:orders@blueprintsetc.com). Project Manuals and Plans are available for preview at: <http://www.blueprintsetc.com> in the Private Plan Room. Contractor's shall obtain password to access this project from Blueprints. Any and all notifications, releases and addendums associated with this project will be posted at <http://www.blueprintsetc.com>. There is a non-refundable fee for each set of documents purchased.
- 1.5.1. **Fee to Include one electronic version of bid documents in CD, Thumb Drive or File Transfer Site – Dropbox format: \$100.00**
- 1.5.2. **Please be advised that all notifications, releases, and addendums associated with this RFP will be posted on-line in the plan room where the original solicitation resides unless otherwise determined that a hard copy is necessary. The state will make no attempt to contact contractors with updated information. It is the responsibility of each contractor to periodically check the posting site for any and all notifications, releases and addendums associated with the RFP.**
- 1.5.3. **NOTE:** On occasion hard copy addendums may be required due to size or type of media/requirements. If applicable and as determined by the Department of Buildings and General Services, addendums that require hard copy distribution, a copy of such addenda will be mailed or delivered for each set of plans and specifications issued to the bidders, prior to the bid date. However, it is the responsibility of the bidder to be sure they have received all addenda, and must so state the number of addenda they have received on the proposal.

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1.5.4.If Bidders choose to pull information from other third-party sites, Bidders' do so at their own risk as there is one official source of information for documents as indicated above.

1.6. **QUESTION AND ANSWER PERIOD:** Any vendor requiring clarification of any section of this RFP or wishing to comment or take exception to any requirements of the RFP must submit specific questions in writing no later than the deadline for questions 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: [BGS.OPCVendorDocs@vermont.gov](mailto:BGS.OPCVendorDocs@vermont.gov). All emails with questions should include the name of the project in the subject line. Any comments, questions, or exceptions not raised in writing on or before the last day of the question period are 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 web site [www.blueprintsetc.com](http://www.blueprintsetc.com). Every effort will be made to have these available as soon after the question period ends, contingent on the number and complexity of the questions.

## 2. DETAILED REQUIREMENTS/DESIRED OUTCOMES:

- 2.1. The objective is to provide a feasibility study and a schematic design on the different state-of-the-art facility models and the benefits and drawbacks of each model to house all Vermont inmates under DOC's jurisdiction. The following shall be included in the firm's scope of work.
- 2.2. Feasibility Study to include, but not limited to, the following activities:
  - 2.2.1. Existing Document Review
    - 2.2.1.1. Legislative Language: Sec. 28: Council of State Governments; Corrections; Study. (See Page 28 of 41; Section 28 of the link: <https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT042/ACT042%20As%20Enacted.pdf>)
    - 2.2.1.2. Legislative Language: Motion passed by Justice Oversight Committee on 09/06/2019 and the Joint Fiscal Committee on September 16, 2019. (See Section D of the link: [https://jfo.vermont.gov/assets/Meetings/Joint-Fiscal-Committee/2019-09-16/b9b408f8aa/2019\\_09\\_16\\_JFC\\_Minutes.pdf](https://jfo.vermont.gov/assets/Meetings/Joint-Fiscal-Committee/2019-09-16/b9b408f8aa/2019_09_16_JFC_Minutes.pdf)).
    - 2.2.1.3. Council of State Government (CSG) report. (See the link: <https://legislature.vermont.gov/Documents/2020/WorkGroups/House%20Corrections%20and%20Institutions/Justice%20Reinvestment%20II/W~Ellen%20Whelan-Ouest~Justice%20Reinvestment%20II~1-23-2020.pdf>).
    - 2.2.1.4. Agency of Human Services (AHS) Major Facilities Reports that were provided to the Vermont Legislature by the Agency of Human Services (AHS) and DOC. (See Attachment 6.8).
    - 2.2.1.5. Facility Condition Assessment Reports provided by Buildings and General Services (BGS) (See Attachment 6.9).
  - 2.2.2. Tour all Vermont Correctional Facilities, to evaluate the building's operational and physical conditions.
  - 2.2.3. Evaluate the current inmate population and develop projections of the inmate population and associated bed capacity required for the DOC for the next 10 (ten) years. Compare the numbers to DOC's current and projected inmate population.
  - 2.2.4. Review the facilities current operating costs for the correctional facilities broken down into fuel, food, employee wages and salaries, energy, transportation, and maintenance for the building. Also include a total number of employees required to staff each of the facilities.
  - 2.2.5. Evaluate and compare DOC's inmate programs and their program needs.
  - 2.2.6. Review the findings based on the information developed by the feasibility study and provide recommendations.

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- 2.2.7. Provide your findings that include any gaps and recommendations you have. Develop a report that explains your findings.
  - 2.2.7.1.1. Allow a minimum of 2 (two) weeks for BGS and DOC to review
  - 2.2.7.1.2. Present findings, during the second week of review, to BGS and DOC and answer any questions that may arise.
- 2.3. Conceptual Design to include but not be limited to:
  - 2.3.1. Based on the information obtained by/with the feasibility study, provide an evaluation on the need of separate facilities, multiple-in-state locations, the pros and cons of a scalable campus style facility, and a combination of both. (See Legislative Language, Section D: [https://lifo.vermont.gov/assets/Meetings/Joint-Fiscal-Committee/2019-09-16/b9b408f8aa/2019\\_09\\_16\\_JFC\\_Minutes.pdf](https://lifo.vermont.gov/assets/Meetings/Joint-Fiscal-Committee/2019-09-16/b9b408f8aa/2019_09_16_JFC_Minutes.pdf)).
  - 2.3.2. Identify major subgroups of inmates and the effectiveness in the different models:
    - 2.3.2.1. Capacity of the system required to meet the needs of identified inmate subgroups which would include women, inmates currently in out-of-state facilities, individuals with mental illness and addiction treatment needs, sex offenders, and the geriatric population;
    - 2.3.2.2. Provision of identified facility-based treatment and programming;
    - 2.3.2.3. Operating and capital costs; and
    - 2.3.2.4. Transitional supports required for successful community re-integration.
  - 2.3.3. Any recommendations for new buildings and / or site shall provide the approximate square footage of buildings and acreage needed.
  - 2.3.4. Provide a cost estimate for any recommendations in report for any changes, upgrades, or new facility. Estimates are to include programming through construction administration.
  - 2.3.5. Provide your findings that include any gaps and recommendations you have. Develop a report that explains your findings.
    - 2.3.5.1. Allow a minimum of 2 (two) weeks for BGS and DOC to review.  
Present findings, during the second week of review, to BGS and DOC and answer any questions that may arise.
  - 2.3.6. Provide other services as required by the BGS Design Guidelines. <http://www.bgs.vermont.gov/sites/bgs/files/files/property-management/BGS-Design-Guidelines.pdf>
- 2.4. Final Report:
  - 2.4.1. Based on the information obtained by the feasibility study and the conceptual design, develop and provide a final report that includes all of the findings and comments provided by BGS and DOC. Include cost estimates for all models (both design and construction), as well as costs for the projected operational costs for all the models over the 10-year period.
    - 2.4.1.1. Provide a draft of the final report.
    - 2.4.1.2. Allow a minimum of 2 (two) weeks for BGS and DOC to review.
    - 2.4.1.3. Present findings, during the second week of review, to BGS and DOC and answer any questions that may arise.
  - 2.4.2. Provide BGS and DOC a final report.
- 2.5. Lead and document weekly progress meetings, in person or via teleconference, throughout the entire project.

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2.6. **PROPOSED PROJECT SCHEDULE:**

Project Event	Date
Feasibility Study Start	AUGUST 3, 2020
Feasibility Study Status Update	AUGUST 28, 2020
Feasibility Study Draft Report.	SEPTEMBER 9, 2020
Conceptual Design Start	SEPTEMBER 28, 2020
Conceptual Design Update	OCTOBER 26, 2020
Conceptual Design Draft Report	NOVEMBER 9, 2020
Final Draft Report	NOVEMBER 30, 2020
Final Report Due	DECEMBER 23, 2020

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.

3.1.2. **Cooperative Agreements.** Bidders that have been awarded similar contracts through a competitive bidding process with another state and/or cooperative are welcome to submit the pricing in response to this solicitation.

3.1.3. **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.

3.2. **BEST AND FINAL OFFER:**

3.2.1. **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.

3.2.1.1. 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.

3.2.2. **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.

3.3. **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.

3.3.1. **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.

3.3.2. **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

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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.**

**3.4. 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.

**3.5. METHOD OF AWARD:** 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.

**3.5.1. Scoring:** Scoring by the Selection Committee members will be based on the cumulative point score of the evaluation criteria assigned by the Selection Committee. This score will be converted to an ordinal scoring system (majority rule). This contract will be awarded to the firm receiving the majority of 1<sup>st</sup> place votes resulting from the conversion, subject to the approval of the Commissioner of Buildings & General Services.

**3.5.2. Evaluation Criteria:** The selection will be based on the following criteria. As these are the evaluation criteria upon which the selection will be based, proposals should respond to each criterion in a well-organized manner and in the order in which they are listed. Respond to each criterion but restrict information to that requested. Unorganized, non-responsive, or excessive irrelevant information will impede our review of your proposal and could adversely affect the score for one or more criteria. **Non-responsive proposals will result in disqualification. All questions MUST be answered.**

CRITERIA	WEIGHT	MAXIMUM POINTS	WEIGHTED TOTAL
1. Strength of Project Team	3.5	10	35
2. Project Approach	3.5	10	35
3. Fee Structure/Price Schedule	3	10	30
<b>TOTAL</b>			100

**3.5.3. Criterion 1: Strength of Project Team (of proposing firm and sub-consultants)**

3.5.3.1. Provide a list of comparable projects performed during the past five (5) years, including client references, and describe nature and scope of design for each project. Include the team and project lead, project cost, start, and end dates; it is acceptable that two of the projects be in the construction phase; however, at least three should be completed projects. Buildings and General Services project and references are not to be included.

3.5.3.1.1. All sub-consultants shall also meet this requirement.

3.5.3.2. Has the team, including sub-consultants, worked together in the past five years on projects that are similar in size, type and complexity? If so, provide a list of the projects, cost,

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completion date, and team members, who worked on those projects using the template provided entitled "Project Team Collaboration Chart".

3.5.3.3. Describe the team's experience with providing operational analysis, feasibility studies, master planning and staffing assessments of existing correctional facilities and how that relates to the programming, planning and design of new correctional facilities. Who will take the lead for the project? What makes this individual qualified to lead?

3.5.3.4. Who will represent the team in the field? What makes this individual qualified to represent the team?

### 3.5.4. Criterion 2: Project Approach

3.5.4.1. Explain in detail how you will approach this project from Programming through Contract Completion.

3.5.4.2. Demonstrate that the firm and their team have a solid understanding of the technical aspects of the project.

3.5.4.3. Explain in detail how your firm has sufficient staff to perform in a timely manner and is able to make the necessary time commitment required to produce drawings and documents to meet the schedule.

3.5.4.3.1. Provide a detailed evaluation of the proposed schedule by explaining challenges and recommending changes. Provide a new schedule based on your evaluation.

3.5.4.4. Provide additional details on challenges to the project and how you plan to resolve those challenges.

### 3.5.5. Criterion 3: Fee Structure/Price Schedule:

3.5.5.1. Provide a reasonable and competitive Price Schedule based on the information submitted under Project Approach.

3.5.5.2. Provide a breakdown of total estimated staff hours and costs for each phase of the project, from programming through contract completion, using the template provided entitled "Design Team Hours and Fee Per Phase". Hourly rates for each team member, including sub-consultants, are also required.

3.5.5.3. Describe in detail additional tasks that may be required or beneficial to the project, including their estimated cost. Itemize anticipated reimbursable expenses associated with all tasks, including their unit cost and estimated total for the project. All unit costs shall be fully burdened; no additional percentages or multipliers may be added.

3.5.5.4. Provide a written explanation of why your rates are reasonable, complete, and understandable hourly rates and itemized expenses for all services.

**IMPORTANT NOTE:** Criterion 3 is being evaluated based on "value", It is important that all requested information, i.e., rates, hours, etc., be provided. Failure to provide the detailed required information may result in a lower evaluation of the fee and could or may result in the disqualification of the proposal.

3.6. **STATEMENT OF RIGHTS:** The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Vendors may be asked to give a verbal presentation of their proposal after submission. Failure of vendor to respond to a request for additional information or clarification could result in rejection of that vendor'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.

3.7. **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.

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3.7.1. **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.

4.1.1. Provide a header/section for each criterion. All the information for that criterion shall be provided under the appropriate heading/section and not in other sections of the proposal. (Pertinent information shall be listed under the heading/section and not in a resume or in the list of projects.)

4.1.2. All pages shall be numbered.

### 4.2. NUMBER OF COPIES:

4.2.1. Submit **seven (7)** Original Qualification Proposals and **two (2)** Original Price Schedules, as well as one digital copy in PDF on a CD or USB flash drive. Also attach copies of an Hourly Rate Sheet and Reimbursables Cost Schedule, along with a completed "Project Team Collaboration Chart" and "Design Team Hours and Fee Per Phase" form.

4.2.2. **Two envelopes are required, one for the Price Schedule and financial information and the second for the Qualifications and other information.** Your attention is directed to the special instructions in Section 5, Paragraph 5.3 below regarding the bid proposal submissions.

### 4.3. COVER LETTER:

4.3.1. 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).

4.3.2. 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.

4.3.3. Exceptions to Terms and Conditions. If the bidder wishes to propose an exception to any terms and conditions set forth in this RFP, including the Standard State Provisions for Contracts and Grants, 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 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.

4.4. **BACKGROUND AND EXPERIENCE:** Provide details concerning the form of business organization, company size and resources; describe experiences relevant to providing Design Services and list all current or past State projects.



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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. **REFERENCES:** Provide the names, addresses, and phone numbers of at least three companies with whom you have transacted similar business in the last 12 months. You must include contact names who can talk knowledgeably about performance.
- 4.6. **REPORTING REQUIREMENTS:** Provide a sample of any reporting documentation that may be applicable to the Detailed Requirements of this RFP.
- 4.7. **CERTIFICATE OF COMPLIANCE and PRICE SCHEDULE:** This form must be completed and submitted as part of the response for the proposal to be considered valid. Bidders may be required to submit pricing information separate from their bid package if specifically required above.

### 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 vendor and will not be considered. **Any delay deemed caused by Security Procedures and mail/courier delivery services 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://bgs.vermont.gov/purchasing/bids>.
  - 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.

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

6.2. Certificate of Compliance and Price Schedule

6.3. Project Team Collaboration Chart

6.4. Design Team Hours and Fee Per Phase form

6.5. Attachment D: Standard State Provisions, Architect/Engineer Professional Service Agreement

6.6. SAMPLE Architect and Engineer State of Vermont Contract

6.7. Attachment E: Agency of Human Services (AHS) Major Facilities Reports.

6.8. Attachment F: Facility Condition Assessment Reports

6.9. Buildings and General Services Design Guidelines

<http://www.bgs.vermont.gov/sites/bgs/files/files/property-management/BGS-Design-Guidelines.pdf>

6.10. Subcontractor Worker Classification Form

**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 and PRICE SCHEDULE**

**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 he 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<sup>SM</sup> Certification
- Other internationally recognized building certification:

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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:

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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:

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

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**CORRECTIONAL FACILITY FEASIBILITY AND CONCEPTUAL DESIGN STUDY**  
**DATE:** \_\_\_\_\_

**F. Price Schedule**

The undersigned proposes to provide Architectural and Engineering Services for the Correctional Facility Feasibility and Conceptual Design Study for the Vermont Department of Corrections, in accordance with the requirements of this Request for Proposal. It is the Bidder's responsibility to thoroughly read and comply with all instructions and requirements of this bid solicitation.

**A. Complete the attached table in accordance with requirements identified in Section 1 of this RFP.**

<b>Deliverable No.</b>	<b>Description</b>	<b>Price</b>	<b>Percentage</b>	<b>Delivery Date</b>
1	Programming	\$		
2	Conceptual Design	\$		
	Reimbursable Expenses	\$		
	Total Project Cost	\$		

**C. Provide your firm's Hourly Rate Sheet and Reimbursables Cost Schedule.**

**D. Provide the following information:**

1. Multiplier for additional services of professional consultants \_\_\_\_\_ times amount billed to the Architect/Engineer for such additional services.
2. Multiplier for additional services of professional sub-consultants \_\_\_\_\_ times amount billed to the Architect/Engineer for such additional services.
3. Architect/Engineer for such additional services.

**G. 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 and PRICE SCHEDULE**

### PROJECT TEAM COLLABORATION CHART

<b>PROJECT NAME &amp; OWNER</b>	<b>CONSTRUCTION COST</b>	<b>FIRM</b>	<b>FIRM</b>	<b>FIRM</b>	<b>FIRM</b>	<b>FIRM</b>	<b>FIRM</b>	<b>FIRM</b>	<b>FIRM</b>

1. Place the name of the project and owner in the first column.
2. Place the total construction cost in the second column.
3. Place the name (abbreviations are fine) in each successive column of the firm that will be a part of the Project Team.
4. Place a checkmark or bullet on the line of each project the Firm worked on within the column for each Firm.



## **Attachment D**

### **Standard State Provisions**

#### **Architect/Engineer Professional Service Agreement**

Attachment C, Paragraphs 6 and 7 are deleted in its entirety and replaced with the following:

#### **6. Independence, Liability, Indemnity:**

- A.** The Party will act in an independent capacity and not as officers or employees of the State.
- B.** This Agreement requires the Party to provide professional services in the design and/or engineering of all or a part of the Project to which this Agreement relates. This is not an Agreement for construction services. However, construction administration, observation or certification services may be required on the part of the Party if this Agreement so provides. Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for all services performed under this Agreement, with minimum coverage as required by the Agency of Administration but not less than \$1,000,000 per claim and \$2,000,000 policy aggregate.
- C.** The Party shall defend the State and its officers and employees against all 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 providing “non-professional services” under this Agreement. As used herein, “non-professional services” means services provided under this Agreement other than professional services relating to the design and/or engineering of all or part of the project. The State shall notify the Party in the event of any such claim or suit covered by this Subsection C, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit arising out of “non-professional services” provided under this Agreement.
- D.** Notwithstanding anything to the contrary set forth in Subsection C above, the Party shall not be obligated to defend the State and its officers and employees against claims or suits arising from the Party’s provision of engineering design services or architectural design services. However, the Party’s obligation to defend the State and its officers and employees against all claims or suits arising out of “non-professional services” provided under this Agreement as provided in Subsection C above and the Party’s other obligations under Attachment C shall remain in effect.
- E.** The Party agrees to indemnify and hold the State, its officers and employees, harmless from and against monetary damages to third parties, together with reasonable costs, expenses and attorney’s fees incurred and paid by the State in defending claims by third parties (collectively “Damages”) but only in the event and to the extent such Damages are incurred and paid by the State as the proximate cause of negligent acts, errors or omissions (“Professional Negligence”) by the Party, its employees, agents, consultants and subcontractors, in providing the professional services required under this Agreement.

F. As used herein, “Professional Negligence” or “negligent acts, errors or omissions” means a failure by the Party to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or similar conditions and circumstances.

G. The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party arising from the provision of “non-professional services” (as defined herein) under this Agreement.

H. The Party shall not be obligated to indemnify the State for any Damages incurred by the State attributable to the State’s own negligent acts, errors or omissions or the negligent acts, errors or omissions of its officers, agents or employees, or the acts, errors, omissions or breach of Agreement by persons or entities other than the Party, its employees, agents, consultants and subcontractors.

I. 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.

THE STATE OF VERMONT

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STANDARD FORM OF AGREEMENT BETWEEN  
STATE OF VERMONT OR ANY AGENCY  
THEREOF AND ARCHITECT/ENGINEER

---

AGREEMENT

made this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_.

BETWEEN Agency of Administration  
Department of Buildings and General Services  
Two Governor Aiken Avenue  
Montpelier, Vermont 05633-5801 \_\_\_\_\_ the State, and  
(Name of Agency)

\_\_\_\_\_ the ARCHITECT/ENGINEER.  
(Name and Address)

It is the intention of the State to  
hereinafter referred to as the Project.

The State and the ARCHITECT/ENGINEER agree as set forth below:

The period of performance under this contract shall commence on \*\*\* and end on \*\*\* with an additional one year extension to allow for one year warranty inspection(s) as may be required of the construction contract work.

MAXIMUM LIMITING AMOUNT \$ \*

PROJECT DESCRIPTION:

- I. THE ARCHITECT/ENGINEER shall provide professional services for the Project in accordance with the Terms and Conditions of this Agreement.



The ARCHITECT/ENGINEER shall provide the professional services for the Project utilizing his or her requisite skills, ability, and judgment reasonably and without neglect. Specifically, the Architect/Engineer shall: (1) be licensed by the State of Vermont as an Architect/Engineer; and (2) design the Project in compliance with all federal, state and local building codes in effect at the time including any and all permit conditions that may be imposed by authorities having jurisdiction.

For purposes of this Agreement, the Architect/Engineer shall be licensed in Vermont before executing this contract and shall maintain his or her license for the duration of this project.

- II. THE State shall compensate the ARCHITECT/ENGINEER, in accordance with the Terms and Conditions of this Agreement in one of the following manners:

(Project Manager needs to select one of the following paragraphs that identifies whether compensation is based on an Hourly Rate or Lump Sum Fixed Fee)

- A. Compensation based on Hourly Rate:

FOR THE ARCHITECT/ENGINEER'S BASIC SERVICES, as described in Paragraph 1.1, a Basic Fee computed as follows:

Principals' time at the fixed rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour. For the purpose of this Agreement, the Principals are:

Employees' time computed at a multiple of \_\_\_\_\_ (\_\_\_\_\_) times the employees' Direct Personnel Expenses as defined in Article 4.

Services of professional consultants at a multiple of \_\_\_\_\_ (\_\_\_\_\_) times the amount billed to the ARCHITECT/ENGINEER for such services.

The amount of said fee shall not in any event exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_)

OR

- A. Lump Sum or Fixed Fee

FOR THE ARCHITECT/ENGINEER'S BASIC SERVICES, as described in Paragraph 1.1, a Basic Fee of a Lump Sum of dollars (\$\_\_\_\_\_) determined by multiplying the estimated construction cost by \_\_\_\_\_%.

PLUS

- B. THE ARCHITECT/ENGINEER'S REIMBURSABLE EXPENSES, amounts expended as defined in Article 5.

- C. FOR THE ARCHITECT/ENGINEER'S ADDITIONAL SERVICES (if any), as described in Paragraph 1.3, a fee computed as follows:

Principals' time at the fixed rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour. For the purposes of this Agreement, the Principals are:

Employees' time computed at a multiple of \_\_\_\_\_ times the employees' Direct Personnel Expense as defined in Article 4.

Additional services of professional consultants authorized in writing by the State at a multiple of \_\_\_\_\_ (\_\_\_\_\_) times the amount billed to the ARCHITECT/ENGINEER for such additional services.

- D. THE TIME AND FURTHER CONDITIONS OF PAYMENT shall be as described in Article 6.

- III. THE ARCHITECT/ENGINEER shall complete those duties set forth in Article 1, Paragraphs 1.1 through 1.1.30 of this Agreement on or before \_\_\_\_\_, 20\_\_ with an additional one year extension to allow

for one year warranty inspection(s) as may be required of the construction contract work.

- a. It is understood that any delay caused by the State shall result in a corresponding extension of the period specified herein. It is the obligation of the Architect/Engineer to immediately notify State of the delay and to initiate a change order amending and extending the date in Paragraph III above, within 30 days.
- b. THE ARCHITECT/ENGINEER shall include one (1) complete set of reproducible record prints, which shall be submitted to the State prior to final payment for basic services to the ARCHITECT/ENGINEER.

The following Paragraph III (c) should be deleted if compensation based on hourly rate is selected in II (A).

- c. THE ARCHITECT/ENGINEER'S fee for basic services shall be adjusted at the completion of the design development phase by multiplying the accepted probable construction cost by the percentage in Paragraph II (A). For purposes of determining the ARCHITECT/ENGINEER's fee, the construction cost is exclusive of any contingency or other exclusions identified in Article 3. In the event that the State and the ARCHITECT/ENGINEER cannot agree on an "accepted probable construction cost", the State may at his option terminate the contract and pay the ARCHITECT/ENGINEER fees due up to the point of termination or direct the ARCHITECT/ENGINEER to develop construction documents and to bid these documents. In the later case, the ARCHITECT/ENGINEER's fee shall be based on the accepted construction bid or the ARCHITECT/ENGINEER's statement of probable construction cost at the design development phase, whichever is least.

#### OPTIONAL

- d. The accepted probable construction cost used to determine the ARCHITECT/ENGINEER's fee (above) shall be converted to a "fixed limit of construction cost" by adding a bidding contingency of 5%. This fixed limit of construction cost shall be established as a condition of this Agreement per Article 3.4.

#### TERMS AND CONDITIONS OF AGREEMENT BETWEEN STATE AND ARCHITECT/ENGINEER

##### ARTICLE 1

#### ARCHITECT/ENGINEER'S SERVICES

##### 1.1 BASIC SERVICES §

The ARCHITECT/ENGINEER's Basic Services consist of the phases described below. Except as specifically provided for herein, the ARCHITECT/ENGINEER shall provide to the State all landscaping architectural services as well as civil, structural, mechanical and electrical engineering in connection with the Project.

The ARCHITECT/ENGINEER shall ensure the project complies with all applicable codes and guidelines in effect at the time of the design, including but not limited to:

- Vermont Fire and Safety Building Code available online at <http://firesafety.vermont.gov>
- Vermont Commercial Building Energy Standards [http://publicservice.vermont.gov/energy\\_efficiency/cbes](http://publicservice.vermont.gov/energy_efficiency/cbes)
- The ARCHITECT/ENGINEER, as directed by the State, will be required to integrate STATE OF VERMONT DEPARTMENT OF BUILDINGS AND GENERAL SERVICES DESIGN GUIDELINES into the development of the design for this project. The latest version is available online <http://bgs.vermont.gov/facilities/forms>

Written reports delivered under the terms of this contract shall be printed using both sides of the paper.

#### SCHEMATIC DESIGN PHASE § INDICATE NOT APPLICABLE IF SECTION IS NOT APPLICABLE

- 1.1.1 The ARCHITECT/ENGINEER shall consult with the State to ascertain the requirements of the Project, and the ARCHITECT/ENGINEER and the State shall confirm such requirements in writing.

- 1.1.2 The ARCHITECT/ENGINEER shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components for and until approval by the State.
- 1.1.3 The ARCHITECT/ENGINEER shall conduct meetings with the State, Efficiency Vermont, and relevant members of the design team, to review the Project and elicit ideas for consideration in developing the most energy efficient project supportable by funding opportunities and consistent with program intent.
- 1.1.4 The ARCHITECT/ENGINEER shall prepare for the State an initial accounting of how the Project may respond to LEED criteria considering available opportunities.
- 1.1.5 The ARCHITECT/ENGINEER shall submit to the State a Statement of Probable Construction Cost based on current area, volume or other unit costs for and until approved by the State.

DESIGN DEVELOPMENT PHASE \$ INDICATE NOT APPLICABLE IF SECTION IS NOT APPLICABLE

- 1.1.6 The ARCHITECT/ENGINEER shall prepare from the approved Schematic Design Studies, the Design Development Documents consisting of drawings (including at least architectural, landscaping, civil, structural, mechanical and electrical plans, building sections; and finish schedule), outline specifications following the Construction Specification Institute "CSI" Format and other necessary documents to fix and describe the size and character of the entire Project as to its site, structural, mechanical, and electrical systems, materials and other such essentials as may be appropriate, for and until approved by the State.
- 1.1.7 The ARCHITECT/ENGINEER shall conduct meetings with the State, Efficiency Vermont, and relevant members of the design team, to review the Design Development Documents for the purposes of furthering the energy efficiency objectives of the Project.
- 1.1.8 The ARCHITECT/ENGINEER shall prepare for the State a revised accounting of how the Project is responding to LEED criteria.
- 1.1.9 The ARCHITECT/ENGINEER shall submit to the State a revised Statement of Probable Construction Cost based thereon for and until approved by the State.

CONSTRUCTION DOCUMENTS PHASE \$ INDICATE NOT APPLICABLE IF SECTION IS NOT APPLICABLE

- 1.1.10 The ARCHITECT/ENGINEER shall prepare from the approved Design Development Documents the Contract Document consisting of the working drawings and specifications (following the CSI Format) setting forth in detail the requirements for the construction of the entire Project, and all necessary bidding information; and shall assist in the preparation of bidding forms, the Conditions of the Contract, and the form of the Agreement between the State and the Contractor, for and until approved by the State.
- 1.1.11 The ARCHITECT/ENGINEER shall prepare for the State a revised accounting of how the Project responds to LEED criteria.
- 1.1.12 The ARCHITECT/ENGINEER shall submit to the State in writing a Revised Statement of Probable Construction Cost based thereon, indicated by changes in requirements or general market conditions for and until approved by the State.
- 1.1.13 The ARCHITECT/ENGINEER shall assist the State as requested in filing the required documents for the approval of governmental authorities having jurisdiction over the Project.
- 1.1.14 The ARCHITECT/ENGINEER shall submit the bid set, at 90% completion of the construction documents, to Efficiency Vermont for construction document review.
- 1.1.15 The ARCHITECT/ENGINEER shall prepare and submit complete set of contract bid documents; drawings to be stamped and signed in PDF format and an unstamped set in .dwg format with a complete set of specifications in Microsoft Word, to the State at no additional cost. ARCHITECT/ENGINEER shall submit all .dwgs documents to the State in AutoCAD 2004 format or newer with all items embedded including Xrefs and photos. ARCHITECT/ENGINEER shall verify compatibility with the State's CADD unit prior to using any AutoCAD specialty software suite or product (civil, mechanical, map, etc.). ARCHITECT/ENGINEER shall furnish all custom support cad files (fonts, line types, plot styles, etc.) to the State. All drawings shall include a configured layout tab with sheet border and viewports for printing. ARCHITECT/ENGINEER shall submit all

electronic files to the State on an optical disc, CD or DVD in a format suitable for use by the Department of Buildings and General Services. These documents are to be provided by ARCHITECT/ENGINEER at no additional cost to the State.

BIDDING OR NEGOTIATION PHASE \$ INDICATE NOT APPLICABLE IF SECTION IS NOT APPLICABLE

- 1.1.16 The ARCHITECT/ENGINEER, following the State's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall provide the State with any documents, assistance, or revised construction documents necessary for the State to: obtain bids or negotiated proposals; award and prepare construction contracts.

CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT \$ INDICATE NOT APPLICABLE IF SECTION IS NOT APPLICABLE

- 1.1.17 The Construction Phase will commence with the award of the Construction Contract to a selected vendor ("Contractor") and will terminate when final payment is made by the State to the Contractor. In any event, the construction phase will not extend beyond 60 days beyond the substantial completion date unless extended by change order. If such extension occurs, additional costs due to the ARCHITECT/ENGINEER shall be negotiated with the State.
- 1.1.18 The ARCHITECT/ENGINEER shall work with the State during the construction of the Project to provide the administration of the contract between the State and the Contractor in accordance with the terms herein and consistent with the contract between the State and the Contractor, and the extent of his duties and responsibilities and the limitations of his authority as assigned therein shall not be modified without his written consent.
- 1.1.19 The ARCHITECT/ENGINEER shall advise and consult with the State and all of the State's instructions to the Contractor shall be issued through the ARCHITECT/ENGINEER after authorization by the State.
- 1.1.20 The ARCHITECT/ENGINEER shall, at all times, have access to the work wherever it is in preparation or progress.
- 1.1.21 The ARCHITECT/ENGINEER shall make periodic visits to the Project site, at least biweekly, and shall make such further visits when reasonably requested by the State, as to familiarize himself with the progress and quality of the work performed and as to determine, on the basis of such visits, if such progress and quality are in accordance with the Contract Documents. The ARCHITECT/ENGINEER shall be responsible for project meeting minutes. In addition to this, the ARCHITECT/ENGINEER shall periodically report his findings thereon to the State, at such times as in the exercise of his professional judgment such findings are appropriate and at least monthly, at the conference provided for in Section 1.1.22, and further at such times as the State may reasonably request. The ARCHITECT/ENGINEER shall not be required to make exhaustive or continuous on-site inspections, except as required in the exercise of his professional judgment for said reports and except in particular, to fulfill the commissioning requirements. The ARCHITECT/ENGINEER shall not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work, and he shall not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents except as provided for herein specifically between the State and the ARCHITECT/ENGINEER.
- 1.1.21.1 In preparing the bid documents, to the extent that the ARCHITECT/ENGINEER utilizes sub-consultants for their expertise, such as, but not limited to: Landscape Architects, Civil, Structural, Mechanical, and Electrical Engineers, these consultants, in effect, become an extension of the ARCHITECT/ENGINEER. Where the term ARCHITECT/ENGINEER is used in Section 1.1.18 as well as 1.1.21 it shall include those sub-consultants when work is being performed in their area of expertise. For example, the Mechanical Engineer would inspect the under slab plumbing before it is backfilled, but then wouldn't necessarily be needed on site until the rest of the mechanical systems are being installed. The sub-consultant shall also be required to periodically inspect the progress of the "as-builts" and verify that they are up to date and verify such to the ARCHITECT/ENGINEER, before the ARCHITECT/ENGINEER issues the certificate of payment for that pay period.
- 1.1.22 Based upon his determination and reports made under Section 1.1.21 of this Agreement and upon the Contractor's applications for payment, the ARCHITECT/ENGINEER shall once every month, after an on-site conference between the State, the Contractor and the ARCHITECT/ENGINEER, determine the amount then owing to the Contractor and shall then issue a certificate of payment for the amount agreed upon. The issuance of a Certificate for Payment shall constitute a representation by the ARCHITECT/ENGINEER to the State, based on

such ARCHITECT/ENGINEER's determination and report and the data supplied to him by the Contractor (without affecting his duties defined in Section 1.1.21), that the work has progressed to the point indicated; that the quality of the work is in accordance with the Contract Documents (subject to the results of any specified subsequent tests required by the Contract Documents, to immaterial and insubstantial deviations from the Contract Documents, which will be corrected prior to completion, and to any further specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to such payment in the amount certified. Provided, however, the issuance of such certificate will not affect any obligations of the Contractor to the State. By issuing a certificate for payment, the ARCHITECT/ENGINEER shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the contract sum. ARCHITECT/ENGINEER shall not accept any part of the work on behalf of the State; ARCHITECT/ENGINEER may only recommend acceptance. Final acceptance is a right reserved solely to the State.

- 1.1.23 The ARCHITECT/ENGINEER shall be, in the first instance, the interpreter of the requirements of all Construction Documents, and shall have all requisite authority relating thereto for the purposes of authorizing the Contractor to proceed or stop with any component of the project after consultation and agreement with the State. The ARCHITECT/ENGINEER shall not be liable to the State for any loss or cost incurred by the State arising from delays in the construction schedule caused by any decision made by the ARCHITECT/ENGINEER in the reasonable exercise of professional judgment either to exercise or not to exercise his authority to stop the Work.
- 1.1.24 The ARCHITECT/ENGINEER shall review and respond to shop drawings, samples, and other submissions of the Contractor as in conformance with the design concept and information in the Contract Documents and the designs and plans relating to the project until approved or not requiring re-submission. The Architect/Engineer shall also review the submittal log at construction meetings and report to the State on a monthly basis their findings thereon.
- 1.1.25 The ARCHITECT/ENGINEER shall prepare all change orders and supporting data for the State's approval.
- 1.1.26 The ARCHITECT/ENGINEER shall conduct inspections to determine the Dates of Substantial Completion and Final Completion, and shall receive written guarantees and related documents assembled by the Contractors and shall issue a final certificate of payment in accordance with Section 1.1.22.
- 1.1.27 The ARCHITECT/ENGINEER shall be responsible for system commissioning in accordance with the BGS design guidelines and as indicated in the *BGS Commissioning Guidelines*. Please see the BGS website <http://bgs.vermont.gov/facilities/forms>. The ARCHITECT/ENGINEER shall inspect, and document, each and every system to ensure that it complies with design intent, including but not limited to: system installation, system operation, and seasonal changeover.
- 1.1.28 Except in the manner specifically provided for herein, the ARCHITECT/ENGINEER shall not be responsible to the State for the acts or omission of the Contractor or any of the Contractor's agents or employees, or any other person not an employee or agent of the ARCHITECT/ENGINEER performing work on the Project. The ARCHITECT/ENGINEER shall be responsible for and shall pay the amount of any increase in the total Contract Price or the total Change Orders Price, which increase results from an error, inconsistency, or omission in the Contract Documents or instructions.
- 1.1.29 Architect/Engineer shall furnish to the State, a complete set of marked up drawings and specifications showing all the changes to the Construction Documents made by Addenda, Change Orders, Shop Drawings, RFIs and other information received from the Clerk; and General Contractor's As-built markups. The changes to the drawings are to be created on a separate layer in the .dwg set and highlighted in a box, cloud or the like in the PDF set. The specifications are also to differentiate the changes made by highlighting in a box, cloud, etc. and be provided in Microsoft Word. These drawings and specifications shall be supplied within three (3) months of the date of Substantial Completion and before final payment.
- 1.1.30 Architect/Engineer (and design team members as required) shall conduct a one year warranty inspection of the completed construction project between the eleventh and twelfth months from the date of substantial completion and shall issue a list of defective items needing correction to the Contractor.

## 1.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

- 1.2.1 The State may at its option secure the services of a person or persons known as a Clerk-of-the-Works, referred to herein as a "Clerk". The Clerk(s) shall, for all purposes of this Agreement, report and be solely responsible to the State. The State may at any time dismiss the Clerk(s) for cause or convenience; however, any such action shall

not affect the State's and ARCHITECT/ENGINEER's obligations under this Agreement. In such event, the State shall use their best efforts to secure the services of a Clerk or clerks under this paragraph as soon as is practicable if the State deems it necessary.

- 1.2.2 The Clerk(s) shall make continuous and complete on-site inspections of the work performed on the Project, to the extent reasonable under all the circumstances. The on-site inspections of the work performed and any reports prepared by the Clerk(s) will be made available to the ARCHITECT/ENGINEER for use in making his Determination and Report under this Agreement, however the use of the Clerk's on-site inspections or reports does not relieve the ARCHITECT/ENGINEER from his/her obligations under paragraph 1.1.22 of this Agreement and it is solely the responsibility of the ARCHITECT/ENGINEER to ensure that that the work has progressed to the point indicated and that the quality of the work is in accordance with the Contract Documents . Further, through such on-site observations by the Clerk(s), the ARCHITECT/ENGINEER shall endeavor to provide protection for the State against defects in the Work, but the furnishing of such Clerk(s) shall not: (1) make the ARCHITECT/ENGINEER responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents; or (2) Relieve the ARCHITECT/ENGINEER from his/her obligation to exercise due diligence and ensure that the work has progressed to the point indicated and that the quality of the work is in accordance with the Contract Documents.

### 1.3 ADDITIONAL SERVICES

The following services are not covered in Paragraphs 1.1 or 1.2. If any of these Additional Services are authorized in writing by the State, they shall be provided by the ARCHITECT/ENGINEER and paid for by the State as hereinbefore provided.

- 1.3.1 Providing special analyses of the State's needs, programming the requirements of the Project and assistance to the permitting process.
- 1.3.2 Providing financial feasibility or other special studies.
- 1.3.3 Providing planning surveys, site evaluations, or comparative studies of prospective sites.
- 1.3.4 Revising previously approved Drawings, Specifications or other documents to accomplish changes not initiated by the ARCHITECT/ENGINEER, except as provided in Paragraphs 1.1.29 and 3.5.1.
- 1.3.5 Providing the required services to execute all State-initiated Change Orders.
- 1.3.6 Preparing documents for alternate bids requested by the State.
- 1.3.7 Providing Detailed Estimates of Construction Costs.
- 1.3.8 Providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Paragraphs 1.1 and 1.2 as may be required in connection with the replacement of such work.
- 1.3.9 Providing professional services made necessary by the default of the Contractor in the performance of the Construction Contract.
- 1.3.10 Providing Contract administration and observation of construction after the Contract Time has been exceeded by more than sixty (60) days through no fault of the ARCHITECT/ENGINEER.
- 1.3.11 Providing services not caused by errors, inconsistency or an omission of the ARCHITECT/ENGINEER after final payment to the Contractor.
- 1.3.12 Providing the services required for or in connection with the selection of furniture and furnishings.
- 1.3.13 Providing services for planning tenant or rental spaces.
- 1.3.14 Making measured drawings of existing construction when required for planning additions or alterations thereto, except as otherwise herein provided.
- 1.3.15 Other services as may be required such as: LEED ratings, energy modeling, commissioning beyond that required

by 1.1.27, telecommunications, audio visual design, , floodway studies, laser scanning of buildings, and geotechnical investigations.

## ARTICLE 2

### THE STATE'S RESPONSIBILITIES

- 2.1 The State shall provide full information regarding its requirements for the Project on or before \_\_\_\_\_, 20\*\*.
- 2.2 The State shall designate a representative authorized to act in its behalf with respect to the Project. The State or its representative shall examine documents submitted by the ARCHITECT/ENGINEER and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the ARCHITECT/ENGINEER's work.
- 2.3 The State shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.
- 2.4 The State shall secure for itself such legal, accounting and insurance counseling services as may be necessary for the Project and such auditing services as he may require to ascertain how or for what purposes the Contractor has used the monies paid to him under the Construction Contract.
- 2.5 The services, information, surveys and reports required by Paragraphs 2.3 shall be furnished at the State's expense, and the ARCHITECT/ENGINEER shall be entitled to rely upon the accuracy of the reports related to the structural, mechanical, chemical and other laboratory tests, inspections and reports required by law or the Contract Documents.
- 2.6 If the representative appointed under Paragraph 2.2 observes or otherwise becomes aware of any fault or defect in the project or non-conformance with the Contract Documents, he shall give prompt written notice thereof to the ARCHITECT/ENGINEER.
- 2.7 The State shall furnish information required of him as expeditiously as necessary for the orderly progress of the work.

## ARTICLE 3

### CONSTRUCTION COST

- 3.1 Construction Cost does not include the fees of the ARCHITECT/ENGINEER and consultants, the cost of the land, rights-of-way, or other costs, which is the responsibility of the State as provided in Paragraphs 2.3 through 2.4. or any of the contingencies available for the project unless specifically stated otherwise.
- 3.2 Labor furnished by the State for the Project, however, with respect only to the construction of such components thereof as have been designed by the ARCHITECT/ENGINEER, shall be included in the Construction Cost at current market rates. Materials and equipment furnished by the State shall be included at current market prices, except that used materials and equipment shall be included as if purchased new for the Project.
- 3.3 Statements of Probable Construction Cost and Detailed Cost Estimates prepared by the ARCHITECT/ENGINEER represent his/her best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the ARCHITECT/ENGINEER nor the State has any control over the cost of labor, materials, or equipment, over construction contractors' methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the ARCHITECT/ENGINEER cannot and does not guarantee that bids will not vary from any Statement of Probable Construction Cost or other cost estimate prepared by him.
- 3.4 When a fixed limit of Construction Cost is established as a condition of this Agreement, it shall include a bidding contingency of five (5%) percent unless another amount is agreed upon in writing. When such a fixed limit is established, the ARCHITECT/ENGINEER in consultation with the State shall be permitted to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and to make reasonable adjustments in the scope of the Project to bring it within the fixed limit. The ARCHITECT/ENGINEER with the approval of the State may also include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit.

- 3.4.1 If the lowest responsible bid or the Detailed Cost Estimate exceeds the latest statement of Probable Construction Cost, the State shall (1) give written approval of an increase in the construction cost, or (2) authorize rebidding the Project, or (3) cooperate in revising the Project scope and quality as required to reduce the probable construction cost, (4) discontinue the project and pay the ARCHITECT/ENGINEER as specified in paragraph 6.2 up to and through Bidding or Negotiation Phase. In the case of (3), the ARCHITECT/ENGINEER, without additional charge, shall modify all drawings and specifications as necessary to bring the latest bona fide bid within the latest Statement of Probable Construction Cost; provided, however, that the ARCHITECT/ENGINEER will not be liable to the State for any loss or cost incurred by the State caused by the delay arising from the making of such modifications.

#### ARTICLE 4

##### DIRECT PERSONNEL EXPENSE

- 4.1 Direct Personnel Expense of employees engaged on the Project by the ARCHITECT/ENGINEER includes ARCHITECT/ENGINEERS, engineers, designers, job captains, draftsmen, specification writers and typists, in consultation, research and design in producing Drawings, Specifications and other documents pertaining to the Project, and in services during construction at the site.
- 4.2 Direct Personnel Expense includes actual cost and of mandatory and customary financial benefits paid.

#### ARTICLE 5

##### REIMBURSABLE EXPENSES

- 5.1.1 Expenses of transportation and living when traveling in connection with the Project for other than regular trips included in the contract requirements, and for long distance calls. All travel outside of the State of Vermont must be approved by the State prior to the expense thereof becoming reimbursable.
- 5.1.2 Expenses of reproduction, postage and handling of Drawings and Specifications, excluding copies for ARCHITECT/ENGINEER's office use and triplicate sets at each phase for the State's review, use and approval; and fees paid for securing approval of authorities having jurisdiction over the Project.
- 5.1.3 If authorized in advance by the State in writing, the expense of overtime work requiring higher than regular rates; perspectives or models for the State's use; and fees of special consultants for other than the normal structural, mechanical and electrical engineering services.
- 5.1.4 It is the intent of the State that the ARCHITECT/ENGINEER shall obtain, at the expense of the State, all necessary borings, soil engineering, and other information required in connection with the Project, but only after estimated costs thereof have been submitted and have been approved in writing by the State. The ARCHITECT/ENGINEER shall provide to the State such detailed cost estimates required by either the State or the ARCHITECT/ENGINEER, at the State's expense, but only after estimated costs thereof have been submitted and have been approved in writing by the State.
- 5.1.5 The ARCHITECT/ENGINEER shall furnish at the request of the State and at the expense of the State, a satisfactory land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private.
- 5.1.6 The ARCHITECT/ENGINEER shall exercise his best judgment and selection in obtaining the information described in Sections 5.1.4 and 5.1.5 and shall be entitled to rely on the accuracy of such information, survey and tests.

#### ARTICLE 6

##### PAYMENTS TO THE ARCHITECT/ENGINEER

- 6.1 Payments on account of the ARCHITECT/ENGINEER's Basic Services shall be made as follows:
- 6.2 Monthly payments shall be made to the ARCHITECT/ENGINEER by the State within 30 days of the receipt by the



State of an itemized invoice in accordance with this Agreement. Progress payments for Basic Services shall be in proportion to the services performed within each phase of service, not to exceed the following percentages:

Schematic Design Phase	15%
Design Development Phase	20%
Construction Documents Phase	40%
Bidding or Negotiation Phase	5%
Construction Administration Phase	20%

- 6.3 In all events, the ARCHITECT/ENGINEER shall submit his completed itemized accounting of all costs monthly to the State, and the State shall make all payments within 30 days of receipt of the invoice.
- 6.4 No deductions shall be made from the ARCHITECT/ENGINEER's compensation on account of penalty, liquidated damages, or other sums withheld from payments to the Contractor.
- 6.5 If the Project is suspended for more than three months or abandoned in whole or in part, the ARCHITECT/ENGINEER shall be paid his compensation for services performed prior to receipt of written notice from the State of such suspension or abandonment, together with Reimbursable Expenses then due and all terminal expenses resulting from such suspension or abandonment.
- 6.6 The State has 30 days from the date the State receives an invoice with full and complete supporting documentation to exercise its right to bill or credit adjustments made necessary by internal audits and quality assurance checks.

#### ARTICLE 7

#### ARCHITECT/ENGINEER'S ACCOUNTING RECORDS

- 7.1 Records of the ARCHITECT/ENGINEER's Direct Personnel, Consultant and Reimbursable Expenses pertaining to the Project, and records of accounts between the State and the Contractor, shall be kept on a generally recognized accounting basis and shall be available to the State or its authorized representative at mutually convenient times, at no additional cost to the State.

#### ARTICLE 8

#### TERMINATION OF AGREEMENT

- 8.1 This Agreement may be terminated by either party upon the giving of seven (7) days written notice to the other party. In the Event of termination by the State for any reason other than a failure to perform on the part of the ARCHITECT/ENGINEER, the ARCHITECT/ENGINEER shall be entitled to receive payment for the actual services rendered and for sums he irrevocably committed to the date of notice of termination. In the event that the ARCHITECT/ENGINEER shall be irrevocably committed to purchase any materials, supplies, or other tangible articles, the State shall be entitled to receive all such materials, supplies, or tangible articles when paid for. In the event of termination on the part of the ARCHITECT/ENGINEER, the ARCHITECT/ENGINEER shall be entitled to receive payment for services and disbursements actually rendered or paid to the date of notice of termination, less any expenses which the State may be put to as a result of the termination by the ARCHITECT/ENGINEER over and above the total sum agreed to herein. In the event that the ARCHITECT/ENGINEER shall have been paid in full for services and expenses previously rendered or paid as of the date of notice of termination, the ARCHITECT/ENGINEER agrees to promptly pay the State the additional expense above referred to upon submission of statement of such expense to the ARCHITECT/ENGINEER by the State.
- 8.2 It is understood that a breach on the part of the State of this Agreement shall be sufficient reason for the ARCHITECT/ENGINEER to be relieved of the additional expense referred to in this paragraph.
- 8.3 Notwithstanding any of the foregoing, the State's obligations under this Agreement shall cease when the funds appropriated for this Agreement are expended.

#### ARTICLE 9

#### OWNERSHIP OF DOCUMENTS

- 9.1 Ownership of Documents: All products of ARCHITECT/ENGINEER'S work, including all drawings, specifications, estimates, and all other documents, including shop drawings, calculations, etc., prepared at any time in connection with the Project, are the sole property of the State, whether the work is executed or not and may not be copyrighted or resold by ARCHITECT/ENGINEER. ARCHITECT/ENGINEER hereby agrees to furnish drawings in .dwg **and** PDF formats, final PDF drawings are to be stamped and signed; final .dwg drawings do not need to be stamped or signed. Specifications, estimates and all other electronic documents are to be in or converted to Microsoft Office: Word, Excel, Project, etc. Any project documents that are not in or converted to one of the above electronic formats, ARCHITECT/ENGINEER shall provide three (3) copies of all such documents. ARCHITECT/ENGINEER shall submit all .dwgs documents to the State in AutoCAD 2004 format or newer with all items embedded including Xrefs and photos. ARCHITECT/ENGINEER shall verify compatibility with the State's CADD unit prior to using any AutoCAD specialty software suite or product (civil, mechanical, map, etc.). ARCHITECT/ENGINEER shall furnish all custom support cad files (fonts, line types, plot styles, etc.) to the State. All drawings shall include a configured layout tab with sheet border and viewports for printing. ARCHITECT/ENGINEER shall submit all electronic files to the State on an optical disc, CD, DVD or USB storage drive in a format suitable for use by the Department of Buildings and General Services. These documents are to be provided by ARCHITECT/ENGINEER at no additional cost to the State.

#### PLAN SECURITY CERTIFICATION

- 9.2 ARCHITECT/ENGINEER acknowledges that the plans pertaining to this project have been declared exempt from public record inspection for security reasons and have been disclosed to Contractor as per 1 V.S.A. §317(c)(32) for the performance of the Work specified herein. Contractor hereby expressly acknowledges and agrees to disclose plans only to a licensed architect, engineer, or Contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the state.

Furthermore, ARCHITECT/ENGINEER agrees to abide by BGS Administrative Policy # 35 and any existing or future directives set forth by the State concerning the copying or distribution of the plans. Fraud, misrepresentation, falsification, or concealing or covering up material facts relating to compliance with these directives may result in one or more of the following actions: termination of the contract(s), suspension of bidding privileges, withholding, deducts, forfeiture of security bonds, and criminal prosecution punishable by imprisonment of up to five years and/or up to a \$10,000 fine as per 13 V.S.A. §3016.

#### ARTICLE 10

#### SUCCESSORS AND ASSIGNS

- 10.1 The ARCHITECT/ENGINEER hereby agrees that he/she will not assign the performance of this Agreement to any other ARCHITECT/ENGINEER not specifically mentioned herein without the prior written consent of the State, provided, however, that this Agreement will inure to the benefit of and be binding upon the partners, successors, assigns or legal representatives of the ARCHITECT/ENGINEER.
- 10.2 The ARCHITECT/ENGINEER hereby agrees that he/she shall personally perform, or personally supervise, all of the services or work in connection with the Project as are designated as the duties and obligations of the ARCHITECT/ENGINEER under this Agreement, and further, the ARCHITECT/ENGINEER agrees that he is solely responsible for the performance of the services herein, designated as those of the ARCHITECT/ENGINEER.

#### ARTICLE 11

#### TAXES

- 11.1 The State is exempt from all sales and federal excise taxes. ARCHITECT/ENGINEER will be responsible for the payment of any sales, consumer, use and other similar taxes for the Work or portions thereof provided by the ARCHITECT/ENGINEER which are legally enacted at the time bids are received, whether or not yet effective.

#### ARTICLE 12

CHANGES TO ARCHITECT/ENGINEER AGREEMENT

12. The State may increase, decrease, or alter the work or materials, or it may otherwise modify the specifications or conditions of the project to be furnished hereunder, and any changes occasioned thereby, including any changes in amounts to be paid hereunder, shall be in the form of a change order which shall be agreed to and approved in writing by the Commissioner of the Department of Buildings and General Services, and which shall become a part of this Contract. Verbal instructions, from any source, shall not be valid. No claim or defense may be made under the Contract with respect to such changes unless agreed to in writing.

ARTICLE 13

GENERAL

13.1 This Agreement consists of \_\_\_\_pages including the following attachments which are incorporated herein.

ATTACHMENT A: Scope of Services

ATTACHMENT B: Payment Provisions

ATTACHMENT C: Standard State Provisions for Contracts and Grants, a preprinted form (revision dated 12/15/2017).

ATTACHMENT D: Standard State Provisions - Architect/Engineer Professional Service Agreement (dated 04/12/2011)

ORDER OF PRECEDENCE

13.2 Order of Precedence: Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D (Standard State Provisions - Architect/Engineer Professional Service Agreement)
- (3) Attachment C (Standard Contract Provisions for Contracts and Grants)
- (4) Attachment A
- (5) Attachment B
- (6) List other attachments in order of precedence

13.3 The obligations and duties contained in Articles, 4, 5, 11, of this Agreement shall apply to ARCHITECT/ENGINEER’s subcontractors as well as to the ARCHITECT/ENGINEER. The ARCHITECT/ENGINEER agrees to include Articles 4, 5, 11 in all its subcontracts. The ARCHITECT/ENGINEER has complied with and shall continue to comply with all requirements with respect to qualification to do business in Vermont and registration with the office of the Secretary of State. In the event that all or a portion of the project is to be subject to a subcontract of the ARCHITECT/ENGINEER, it shall be the responsibility of the ARCHITECT/ENGINEER to determine that the subcontractor has complied with the above requirements of registration and qualification.

13.4 Paragraph headings are inserted for convenience only and are not to be relied upon for content.

This Agreement executed the day and year first written above.

**STATE:**

**ARCHITECT/ENGINEER**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE

## ATTACHMENT A – SCOPE OF WORK OVERVIEW

Contractor shall provide all professional services necessary to satisfactorily complete XXX of the XXX at XXX in XXX, Vermont.

The Project shall be in accordance with the work described in Attachment A. The following represents a summary description of the Project.

### DESCRIPTION OF WORK:

- A. The work consists of, but is not limited to, the XXX. Including, but not limited to, the following major components:

Delete the following paragraph if Submittal Exchange isn't going to be used:

### ELECTRONIC SUBMITTALS:

Contractor shall obtain a license for the State to utilize Submittal Exchange for the purposes of this project. The State and its representatives will have full control of the use of Submittal Exchange by authorized users of the State.

- A. Submittal Exchange® ([www.submittalexchange.com](http://www.submittalexchange.com)) shall be used to provide an on-line database and repository, which shall be used to transmit and track project-related documents. The intent for using this service is to expedite the construction process by reducing paperwork, improving information flow, and decreasing submittal review turnaround time.
  - a. Project submittals (shop drawing, product data and quality assurance submittals) shall be transmitted by the Contractor in PDF to Submittal Exchange®, where it will be tracked and stored for retrieval for review. After the submittal is reviewed it shall be uploaded back to Submittal Exchange® for action and use by the Contractor.
  - b. The service also tracks and stores documents related to the project such as Request for Information (RFI's), Architect/Engineer's Supplemental Instructions (ASI), Information Bulletins (IB's), CAD Coordination, Commission, Construction Change Directive (CCD), Contractor's Daily Reports, Minutes, Photos, Quality Control, Shop Drawings, Testing, Closeout Documents including As-Built Drawings, Operations and Maintenance Manuals and other project related documents.
  - c. The electronic submittal process shall not be used for color samples, color charts, or physical material samples.
- B. The Project Manager will coordinate the initial training between the Contractor and Submittal Exchange®.

**Attachment B - Payment Provisions**

The State shall pay the Contractor a maximum amount of \$XXXX upon satisfactory completion of the project and acceptance thereof by the state for all work identified in the Standard Contract Form and Attachment A, as follows:

1. **Contract Sum:** The State shall pay Contractor compensation as follows: Maximum Amount of \$XXXX.00; this sum includes any and all costs associated with the services provided under this contract, Including reimbursable expenses.
2. If Additional Services are required and approved in advance by State, services shall be invoiced as follows:
  - a. Hourly Rate Schedule: Attach agreed upon hourly rate sheet

1.	
2.	
3.	

- b. Detailed itemization of reimbursable expenses associated with the additional services.
  - c. The multiplier for additional services of professional sub-consultants is \_\_\_\_%.
3. Contractor shall be paid based on documentation of work performed and included in invoices. Contractor shall submit invoicing and shall include:
  - A numbered invoice.
  - Description of work, # of hours worked if applicable, including copies of time sheets and a certified payroll following the USDOL form (or comparable);
  - Copies of original receipts for all materials purchased or costs incurred as a result of the scope of work (if applicable);
  - Time frame indicated of when work was performed;
  - Contract number that the invoice is to be paid from;
  - Certification that the contractor has no ownership (majority or minority) in any subcontractor they claim for profit and overhead;
  - Supporting documentation of material costs, in accordance with the percentage specified in the contract. This supporting documentation is required for verification.
4. This agreement represents the entire agreement between the parties; 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.
5. **Work Product Ownership:** 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.
6. Contractor shall provide a detailed description of all work completed with each invoice.
7. **Payment Terms:** Net 30. The State has 30 days from the date the state receives an invoice with full and complete supporting documentation, free from errors, to exercise its right to bill or credit adjustments made necessary by internal audits and quality assurance checks.
8. The State shall not pay for any unauthorized labor, materials, equipment or expenses of Contractor.
9. Any services outside of agreement shall not be allowed.

10. The amount of compensation paid to the undersigned for extra work and change orders in one of the following manners as directed by the State.
  - a. A price agreed upon between the State and the Contractor.
  - b. A price determined by adding 15% for overhead and profit to the total direct cost of any extra work.

11. Contractor shall invoice the State at:

State of Vermont  
Buildings and General Services  
Attention: **Project Manager**  
Governor Aiken Avenue  
Montpelier, VT 05633-5801

SAMPLE

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

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

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

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

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

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

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

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

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

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

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or



indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

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

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

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

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

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

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

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

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its

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

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

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

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

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

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

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

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

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

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or

C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

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

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

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

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

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

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

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

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

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

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

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

**27. Termination:**

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

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

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

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

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

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

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

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

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

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

(End of Standard Provisions)

## Attachment D

### Standard State Provisions

#### Architect/Engineer Professional Service Agreement

Attachment C, Paragraphs 6 and 7 are deleted in its entirety and replaced with the following:

#### 6. Independence, Liability, Indemnity:

- A. The Party will act in an independent capacity and not as officers or employees of the State.
- B. This Agreement requires the Party to provide professional services in the design and/or engineering of all or a part of the Project to which this Agreement relates. This is not an Agreement for construction services. However, construction administration, observation or certification services may be required on the part of the Party if this Agreement so provides. Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for all services performed under this Agreement, with minimum coverage as required by the Agency of Administration but not less than \$1,000,000 per claim and \$2,000,000 policy aggregate.
- C. The Party shall defend the State and its officers and employees against all 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 providing “non-professional services” under this Agreement. As used herein, “non-professional services” means services provided under this Agreement other than professional services relating to the design and/or engineering of all or part of the project. The State shall notify the Party in the event of any such claim or suit covered by this Subsection C, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit arising out of “non-professional services” provided under this Agreement.
- D. Notwithstanding anything to the contrary set forth in Subsection C above, the Party shall not be obligated to defend the State and its officers and employees against claims or suits arising from the Party’s provision of engineering design services or architectural/engineering design services. However, the Party’s obligation to defend the State and its officers and employees against all claims or suits arising out of “non-professional services” provided under this Agreement as provided in Subsection C above and the Party’s other obligations under Attachment C shall remain in effect.
- E. The Party agrees to indemnify and hold the State, its officers and employees, harmless from and against monetary damages to third parties, together with reasonable costs, expenses and attorney’s fees incurred and paid by the State in defending claims by third parties (collectively “Damages”) but only in the event and to the extent such Damages are incurred and paid by the State as the proximate cause of negligent acts, errors or omissions (“Professional Negligence”) by the Party, its employees, agents, consultants and subcontractors, in providing the professional services required under this Agreement.
- F. As used herein, “Professional Negligence” or “negligent acts, errors or omissions” means a failure by the Party to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or similar conditions and circumstances.
- G. The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party arising from the provision of “non-professional services” (as defined herein) under this Agreement.

H. The Party shall not be obligated to indemnify the State for any Damages incurred by the State attributable to the State's own negligent acts, errors or omissions or the negligent acts, errors or omissions of its officers, agents or employees, or the acts, errors, omissions or breach of Agreement by persons or entities other than the Party, its employees, agents, consultants and subcontractors.

I. 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.

SAMPLE

**PROJECT NAME:**  
**CONTRACT #:**  
**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 for workers' compensation purposes. 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**