



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNSEL

REQUEST FOR PROPOSAL

FOR THE PENSION BENEFITS, DESIGN, AND FUNDING TASK FORCE
PURSUANT TO 2021 ACTS AND RESOLVES No. 75

ISSUE DATE: July 22, 2021
QUESTIONS DUE BY: August 6, 2021
DUE DATE: August 20, 2021

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

<https://legislature.vermont.gov/committee/detail/2022/367>

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1. OVERVIEW:

- 1.1. BACKGROUND: Recent legislation passed by the Vermont General Assembly in 2021 Acts and Resolves No. 75 (Act 75) authorizes the Office of Legislative Counsel and the Joint Fiscal Office to contract for advisory services for the Pension Benefits, Design, and Funding Task Force from a legal expert.
- 1.2. CONTRACT PERIOD: The contract shall become effective upon execution by the parties.
- 1.3. The contract shall terminate upon acceptance by the Pension Benefits, Design, and Funding Task Force of the final legal advisory report required under the contract.
- 1.4. CONTRACT VALUE: The total appropriation available for the evaluation is \$50,000, which is inclusive of all expenses.
- 1.5. QUESTIONS: Any consultant requiring clarification of any section of this proposal or wishing to comment on any requirements or other portion of the RFP should submit in writing their inquiry to Michael O'Grady (mogrady@leg.state.vt.us) or Chris Rupe (crupe@leg.state.vt.us) no later than the deadline for questions indicated on the first page of this RFP. Any comments, questions, or exceptions not raised in writing on or before the last day of the question period are waived.
- 1.6. INSTRUCTIONS FOR BIDDERS: See sections 5 and 6 of this RFP.

2. DETAILED REQUIREMENTS:

- 2.1. BACKGROUND: In Act 75, the Vermont General Assembly established the Pension Benefits, Design, and Funding Task Force (Task Force). The purpose of the Task Force is to review and report on the benefits, design, and funding of retirement and retiree health benefit plans for the Vermont State Employees' Retirement System and the Vermont State Teachers' Retirement System.

Specifically, the Task Force shall make recommendations about benefit provisions and appropriate funding sources along with other recommendations it deems appropriate for consideration, consistent with actuarial and governmental accounting standards, as well as demographic and workforce trends and the long-term sustainability of the benefit programs, including the following:

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(A) developing and evaluating a range of strategies to lower the actuarially determined employer contributions and unfunded actuarially accrued liability based on actuarial value of assets in the State Employees' Retirement System and the Teachers' Retirement System by between 25 and 100 percent of the size of the increases from fiscal year 2021 to fiscal year 2022, as reported in the respective Actuarial Valuation and Review for each retirement system, dated June 30, 2020, while maintaining the 2038 amortization date;

(B) a five-year review of benefit expenditure levels as well as employer and employee contribution levels and growth rates and a three-, five-, and 10-year projection of these levels and rates;

(C) identifying potential options for limiting the growth in the actuarially determined employer contributions to not more than inflation;

(D) assessing the impacts associated with any modifications to the current amortization schedule;

(E) based on benefit and funding benchmarks:

(i) proposed benefit structures with the objective of adequate benefits, including an evaluation of a shared-risk model for employer and employee contributions and cost-of-living adjustments, with a focus on reducing any future increases to the unfunded actuarially accrued liability;

(ii) an estimate of the cost of current and any proposed benefit structures on a budgetary and full actuarial accrual basis;

(iii) the State's pension contributions as a percentage of direct general spending and a comparison of other states' pension contributions; and

(iv) how proposed benefit changes for new members may reduce the impact of future actuarial assumption losses;

(F) evaluating any cross-subsidization between all groups within the Vermont State Employees' Retirement System and adjusting contribution amounts to eliminate any cross-subsidization;

(G) examining permanent and temporary revenue streams to fund the Vermont State Employees' Retirement System and the State Teachers' Retirement System;

(H) a plan for prefunding other postemployment benefits, with an evaluation of using federal funds to the extent permissible, including identifying long-term impacts of pay-as-you-go funding;

(I) evaluating the intermediate and long-term impacts to the State and local economies because of any proposed changes to current benefit structures and contribution characteristics and their potential effects on retiree spending

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power, including retirees who identify as female and retirees who are persons with disabilities; and

(J) an examination of the effects of current benefit structures and contribution characteristics on the recruitment and retention of public school educators and State employees and an evaluation of any proposed changes to current benefit structures and contribution characteristics on the recruitment and retention of public school educators and State employees in the future.

The Task Force shall not make recommendations on adjusting the assumed rates of return.

This RFP is seeking the services of a nationally recognized public pension law firm to advise the Task Force in connection with the Task Force's review and report to the General Assembly on the design and funding of pension and retiree health benefits for Vermont State Employees' and Teachers' Retirement Systems pursuant to Act 75 of the 2021 session. Act 75 may be found here: <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT075/ACT075%20As%20Enacted.pdf>.

2.2. SCOPE OF WORK:

The following list of services is required.

- 2.2.1. Review constitutional, legal, and contractual issues relative to the provision of, and revision thereto, of state pension and retiree health benefits.
- 2.2.2. Advise the Task Force on the legality, under state and federal law, of options to modify existing Vermont State pension and retiree health benefits design, structure, and contribution levels consistent with the charge of the Task Force.
- 2.2.3. Review proposed pension and retiree health benefit, design, or contribution level revisions to ensure compliance with IRS and other regulatory compliance for governmental plans.
- 2.2.4. Provide other legal consultation services as requested by the Task Force.

3. GENERAL REQUIREMENTS:

- 3.1. INVOICING: Upon completion of all tasks described in Sec. 2 of this RFP, the consultant must submit an invoice on standard billhead and forwarded directly to the Office of Legislative Counsel. The invoice shall specify the address to

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which payments will be sent and shall be fully itemized and contain sufficient detail of services and expenses. Charges by Contractor for late payment of invoices are prohibited.

- 3.2. CANCELLATION: The State specifically reserves the right to cancel the contract, or any portion thereof, if, in the opinion of the Office of Legislative Counsel, the services or materials supplied by the consultant are not satisfactory or are not consistent with the terms of the contract.
- 3.3. EVALUATION CRITERIA: The Office of Legislative Counsel shall have the authority to evaluate proposals and select the bidder(s) as may be determined to be in the best interests of the State. Proposals will be evaluated for their responsiveness to the scope of work and other specifications in this RFP.
- 3.4. CONFIDENTIALITY: The successful proposal will become part of the contract file and will become a matter of public record, as will all other proposals received. If the proposal includes material that is considered by the bidder to be proprietary and confidential under 1 V.S.A. chapter 5, the bidder shall clearly designate the material as such, explaining why such material should be considered confidential. The bidder must identify each page or section of the proposal that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the bidder if the identified material were to be released. Under no circumstances can the entire proposal or price information be marked confidential. Proposals so marked may not be considered.
- 3.5. CONTRACT TERMS: The selected consultant will sign a contract with the Office of Legislative Counsel to provide the evaluation named in their proposal at the price listed or agreed upon. The contract will include the standard State provisions described in Attachment A. The terms and conditions from this RFP and the consultant's proposal will become part of the contract. This contract will be subject to review throughout its term. The State will consider cancellation upon discovery that the consultant is in violation of any portion of the agreement, including an inability by the consultant to provide the services offered in its proposal.
- 3.6. STATEMENT OF RIGHTS: The State reserves the right to obtain clarification or additional information necessary to evaluate properly a proposal. Failure of a bidder to respond to a request for additional information or clarification could result in rejection of that bidder's proposal. To secure a project that is deemed to be in the best interests of the State, the State reserves the right to accept or

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reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions.

- 3.7. TAXES: Most State purchases are not subject to federal or State sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. If taxes are to be applied to a purchase, it must be so noted in the proposal.
- 3.8. ORDER OF PRECEDENCE: The order of preference for documentation will be the contract and attachments, the RFP, the contractor's proposal, and any amendments.
- 3.9. AMENDMENTS: 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 the consultant.
- 3.10. NO-COLLUSION: The State is conscious of and concerned about collusion. It should therefore be understood by all that in signing bid and contract documents, they agree 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 consultant. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, all bidders should understand that this paragraph might be used as a basis for litigation.
4. BIDDER PROPOSAL CONTENT AND FORMAT: The content and format requirements listed below are the minimum required for evaluation. They are not intended to limit the content of the proposals; bidders may include additional information or offer alternatives that may be considered.
 - 4.1. NUMBER OF COPIES: Submit one original and two copies unless submitting electronically as a PDF.
 - 4.2. BACKGROUND AND EXPERIENCE: Provide a full description of your experience, including particular experience relevant to the proposed project and a list of all relevant current or past State projects.
 - 4.3. PROJECT PLAN: Describe the project management structure, major project milestones, and timing of periodic updates to the Office of Legislative Counsel. Describe the process for creating an outreach plan. Describe your approach for working with the Task Force.

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4.4. PROJECT STAFFING: Describe the qualifications of key personnel and the role each of them is expected to play. Describe the assistance you expect from the Task Force and Vermont State employees, including legislative staff, as well as from other Vermont stakeholders.

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

4.5. REFERENCES: Provide names, addresses, and telephone numbers of at least two clients with whom you have transacted similar business in the last three years. You must include contact names who can speak knowledgeably about your performance.

4.6. PRICING: Any and all costs that you wish the State to consider must be submitted. The cost structure for the project should be described, including billing rates and estimated hours for key staff, payments to any subcontractors, overhead rates, and estimated non-salary expenses, including travel.

5. SUBMISSION INSTRUCTIONS:

5.1. CLOSING DATE: The closing date for the receipt of proposals is 5:00 p.m. on August 20, 2021

5.2. DELIVERY METHODS:

5.2.1. 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 Legislative Counsel prior to the time of the bid opening.

5.2.2. EXPRESS DELIVERY: If bids are 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 Legislative Counsel.

5.2.3. HAND DELIVERY: Hand-carried bids shall be delivered to the Office of Legislative Counsel and time stamped prior to the bid opening.

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5.2.4. ELECTRONIC: Electronic bids may be submitted as a PDF file.

5.2.5. FAXED BIDS: Faxed proposals are not acceptable.

6. ATTACHMENT:

6.1. ATTACHMENT A: State Contract Provisions

ATTACHMENT A: STATE PROVISIONS FOR CONTRACTS AND GRANTS

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ATTACHMENT A: STATE PROVISIONS
FOR CONTRACTS AND GRANTS

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. The 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 The 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 attorney's 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

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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 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

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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, that 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: The 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. The 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 that the Party owes the State against any sums due the Party under this Agreement; provided, however, that any setoff 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. The 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, and corporate and/or personal income tax on income earned within the State.
- B. The 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. The 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. The 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.) The 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.

The 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, the 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: The 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. The 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 the 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'

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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).

The Party shall include the following provisions of this Attachment A 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: The 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: The 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: The Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither the Party nor the 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.

The Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, the 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: The Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: The 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: The 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 that 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, the 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 that 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 the Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, the Party certifies that none of these State funds will be used to interfere with or restrain the exercise of the 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, the 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

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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)