

AGREEMENT FOR PRELIMINARY DESIGN SERVICES

by and between

FITZGERALD ENVIRONMENTAL ASSOCIATES, LLC.

and the

TOWN OF GEORGIA, VERMONT

I. AGREEMENT FOR SERVICES

- A. It is agreed by and between FITZGERALD ENVIRONMENTAL ASSOCIATES, LLC. (hereinafter called FEA) and the Town of Georgia (hereinafter called the Town) that FEA shall provide the Town with preliminary design services the Silver Lake Road Floodplain Restoration Project (WPD ID 14605). The Scope of Work, Schedule, and Budget are as specified in the Attachments.
- B. This agreement consists of the body and the following attachment that is incorporated herein:

Attachment A: Scope of Work & Schedule

Attachment B: Budget

Attachment C: Standard State Provisions

II. GENERAL TERMS AND CONDITIONS

- A. It is understood that FEA may retain qualified help to assist with this work. Whenever feasible, local labor shall be used to assist professionals in the gathering and compilation of data, thus minimizing expenses.
- B. The maximum dollar amount for all services performed under this Agreement shall not exceed **\$23,546.00** unless otherwise amended. The Town will be charged for only that portion of the **\$23,546.00** actually incurred by FEA.
- C. The period of performance under this Agreement shall commence **on the date of signing, 2026, and run through June 30, 2027**, unless otherwise amended.
- D. Ownership of all materials produced under this agreement shall remain with the Town. FEA may not distribute copies of materials produced under this agreement without the Town's consent, except as provided for by state law.

- E. Changes, modifications, or amendments in the terms, conditions and fees of this Agreement shall be written and signed by the duly authorized representatives of FEA and the Town.
- F. The parties agree that FEA, and any agents and employees of FEA shall act in an independent capacity and not as officers or employees of the Town.
- G. The Town, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed under this Agreement.
- H. Reasonable extensions of time for completing the work may be granted in writing by the Town, if FEA can demonstrate that it was unavoidably delayed by circumstances beyond its control.
- I. The Town shall appoint one person as the principal contact for this project.
- J. If, through any cause, FEA shall fail to fulfill in a timely and proper manner its obligations under this Agreement, the Town shall have the right to terminate this Agreement by giving written notice to FEA and specifying the effective date thereof, at least thirty days prior to the effective date of such termination. All costs and fees earned prior to the date of termination shall be reimbursed to FEA by the Town.
- K. The fees charged for services to the Town for the duration of this contract are as outlined below:
 - (1) Preliminary Design Services: actual costs (labor and overhead);
 - (2) Materials at cost; and
 - (3) Reimbursement for incurred expenses.

III. OBLIGATIONS OF FITZGERALD ENVIRONMENTAL ASSOCIATES, LLC.

- A. FEA will work with and be responsible to the Town of Georgia in providing the services specified in Attachment A: Scope of Work & Schedule and Attachment B: Budget.
- B. FEA shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to costs incurred under this Agreement and make them available at reasonable times during the period of this Agreement.
- C. FEA shall invoice the Town quarterly and at the end of the contract period (or at project completion, whichever is sooner). FEA shall submit periodic

progress reports describing the progress of work to date. The final invoice and progress reports shall indicate the total hours worked.

- D. All statutory requirements under Vermont law in effect at the time and all pass-through requirements of State or Federal funding agencies will be observed by FEA and any third party hired by FEA.
- E. Before commencing work on this Agreement, FEA must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of FEA 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.

IV. OBLIGATIONS OF THE TOWN

- A. In consideration of the services to be provided by FEA, the Town agrees to pay FEA after review and approval of invoices submitted in accordance with the provisions of Section III.C. The invoices shall be payable to FEA within 30 days following delivery of all final products under this Agreement and/or receipt of the invoice.
- B. The Town agrees to organize and sponsor meetings with FEA staff and/or consultant as necessary to review various reports or drafts as called for in the attached Scope of Work.
- C. The Town agrees to make available to FEA and/or its consultant, at Town expense, if any, relevant information, data, reports, plans, bylaws or ordinances as requested. All materials belonging to the Town will be returned.
- D. The Town agrees to cooperate with and administratively assist FEA's staff and/or consultant without charge in carrying out design tasks. This shall include but not be limited to:
 - (1) assisting in the verification of documents and information;
 - (2) making photocopies of reports and/or documents prepared for distribution;
 - (3) paying for publishing and mailing costs related to public participation efforts, legal notices and public hearings;
 - (4) providing any additional available reports, studies, bylaws and/or ordinances as requested;
 - (5) assisting with public participation in the design process;
 - (6) holding FEA and/or its consultant harmless for any liabilities resulting from inaccuracies in information provided by the Town.
- E. The Town agrees to review, in a timely manner, any draft(s) delivered by FEA's staff and/or consultant. The Town will provide comments needed for final editing and production to complete this project.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed this ____ day of August, 2026 at Georgia, Vermont.

Fitzgerald Environmental Associates

Date

Town of Georgia

Date

Section 1 – Project Overview

Project Understanding

Incised stream channels and undersized stream crossings in Vermont negatively impact water quality and aquatic organism habitat and passage while posing a safety hazard to nearby residents and municipal infrastructure. Projects that improve floodplain connectivity and address undersized crossings in the Lake Champlain watershed benefit the lake ecosystem by mitigating downstream phosphorus loading. In addition, these projects provide many co-benefits such as in-stream habitat improvements, flood and erosion risk reduction, and infrastructure resiliency.

Based on the information provided through the Request for Proposals (RFP), Fitzgerald Environmental Associates (FEA) understands that NRPC is working with the Town of Georgia (hereafter “Town”) and the Lamoille Basin Clean Water Service Provider (CWSP) to solicit proposals for preliminary engineering design services to include replacement of an undersized, perched culvert beneath Silver Lake Road, installation of process-based restoration practices, floodplain reconnection, and riparian wetland restoration.

FEA’s deep experience with stream and wetland restoration project design for CWSPs and their partners will allow for thorough exploration of feasible restoration alternatives with NRPC and the Town. FEA’s team brings a strong background in the disciplines required to meet the project needs, including stream and wetland assessment, and culvert engineering. FEA is well-suited to provide the requested alternatives analysis and preliminary designs for NRPC and the Town, drawing on an extensive background in water resources engineering, restoration design, and hydraulic modeling.

Project Team

Fitzgerald Environmental Associates, LLC

Fitzgerald Environmental Associates, LLC, (FEA) is a water resources consulting firm located in Colchester, VT. FEA was established in 2006 and offers technical consulting and engineering design services in the applied water and geospatial sciences, specializing in watershed and stream assessment and restoration, stormwater treatment system design and permitting, stormwater and streamflow monitoring, wetland delineation, and geospatial mapping and modeling. As indicated in Section 5 of our proposal, FEA has



FEA Staff performing a dam survey in Vermont.

extensive experience with preliminary and final design development for stream restoration and wetland restoration projects and has worked with many clients to complete final designs, obtain all required state and federal permits, and provide construction oversight for project implementation.



Project Team Organization

Evan Fitzgerald will serve as the Project Manager and will ensure effective communication and coordination between the FEA team, NRPC, and the Town. Jordan Duffy will be the Project Co-Manager, assisting with the overall effectiveness of the project as well as design considerations based on his deep engineering expertise with similar projects. The anticipated roles of each staff member on our Project Team are summarized in Table 1, below. Resumes for Project Team staff are provided in Attachment A.

Table 1. FEA Project Team Members and Responsibilities		
Person/Title	Project Team Role	Technical Expertise
Evan P. Fitzgerald, PE, CFM, CPESC <i>Principal Hydrologist / Geomorphologist</i>	Project Manager, Field Surveys, Permit Review, Project Design, Reporting	Water Resources Engineering specializing in Fluvial Geomorphology, Hydrology, Stormwater Management, and Stream Restoration
Jordan M. Duffy, PE, CPESC <i>Water Resources Engineer</i>	Project Co-Manager, Field Surveys, Modeling QA/QC, Permit Review, Design Plans, Reporting	Water Resources Engineering specializing in Hydrologic and Hydraulic Modeling, Stream Crossing Design, and Stream Restoration
Abby E. Munterich, EIT <i>Water Resources Designer</i>	Desktop Reviews, Field Surveys, Modeling, Design Drafting, Reporting	Water Resources Engineering specializing in LTPBR Stream Restoration, Shoreline Stabilization, and Stormwater Design
Laura O'Brien <i>Staff Scientist</i>	Field Surveys, Modeling, Design Drafting, Wetland Delineation, Mapping	Watershed Sciences specializing in Wetlands Assessments, Field Surveys, GIS, and CAD Drafting

Section 2 – Scope of Work

FEA's team will handle all technical and engineering work requested in the RFP and provided in our scope of services below. FEA will rely on NRPC to assist with the following efforts:

- Coordinating meetings between FEA and the Town (and landowners as needed)
- Soliciting DEC programmatic staff comments on design
- Media announcements
- ANR Online Clean Water New Project Form—copy of submission for next phase

Task 1: Project Initiation

FEA staff will finalize a schedule and participate in a site visit with NRPC staff, Town of Georgia representatives, and other partners as needed. During this meeting, FEA and project partners will verify mutual understanding of the project context and goals, confirm the responsibilities of each party, and



discuss the study objectives. Our team will document the meeting and circulate minutes to the Town and NRPC for review.

Estimated Fee: \$1,823

Task 1 Deliverables:

- Meeting minutes (PDF)

Task 2: Existing Conditions Report & Alternatives Analysis

Desktop Data Collection

FEA staff will collect and review all prior studies and publicly available data (i.e., LiDAR, wetland and floodplain mapping, etc.) for the Silver Lake Road site prior to conducting a field visit. In addition, FEA will produce a GIS basemap to assist in field data collection efforts.

Field Survey (Topography, Stream/Wetlands Assessments)

FEA staff will collect detailed topographic survey data for the project area to support hydraulic modeling and preliminary design. A centimeter-grade GPS unit will be used to set survey benchmarks and a combination of this GPS unit and a Nikon NPL 322+ Total Station will be used for the topographic survey. Survey data will be reduced and incorporated into the LiDAR topographic data to enhance accuracy within the project area.

FEA will investigate the stream channel and floodplains within the project area. A site-specific rapid geomorphic assessment will be conducted (and incorporated into the data collection efforts), to include observations of bankfull width and stream geometries, upstream and downstream channel slopes, grain size distribution of channel substrate, and any additional channel characteristics that will inform the restoration efforts.

Wetland delineations will be completed in areas identified for restoration work and as access points for construction equipment. It is assumed that impacts to jurisdictional wetlands will be avoided to the greatest extent practicable, such that the VTDEC Wetlands Program will deem the project an allowed use under Section 6.23 of the Vermont Wetland Rules. FEA will also observe, document, and inventory both terrestrial and aquatic invasive species onsite.

Existing Conditions Plan

FEA staff will utilize the project basemaps with all relevant data layers to progress the existing conditions plan. LiDAR elevation data will be used to verify watershed mapping and refine the estimated drainage area to the project site. Field survey data will be reduced and processed in AutoCAD Civil 3D software. An Existing Conditions Plan will be prepared to illustrate site conditions and document observations made during the site visits.

Initial Hydrologic / Hydraulic (H&H) Analysis and Modeling

FEA will evaluate the watershed hydrology of the Silver Lake outlet stream (aka Beaver Meadow Brook on the effective FEMA Flood mapping) for estimated discharge flows using a variety of methods such as USGS StreamStats (Olson, 2023), New England Transportation Consortium (Jacobs, 2010), FEMA Flood Hazard Studies, and other regional regressions (Mulvihill *et al.*, 2007; Dunne and Leopold, 1978). FEA will then



utilize a combination of LiDAR and collected topographic survey data to create a seamless terrain for hydraulic evaluation of the project area using HEC-RAS software (USACE, 2022). Two-dimensional modeling methods will be employed to estimate flood flow velocities, depths, and water surface elevations for different flood events through the stream system, including the undersized culvert, and upstream and downstream reaches.

Alternatives Analysis Memo and Conceptual (10%) Design Plans

FEA will follow up on the initial H&H modeling by providing an alternatives analysis on the floodplain and wetland restoration approach, as well as the culvert replacement options. The alternatives analysis will dive deeper into the various options for restoration practices, project layout, and construction approach. FEA will produce a conceptual (10%) design plan set for each of the identified alternatives to best illustrate the different approaches. At a minimum, the plan set for each alternative will include an Existing Conditions sheet as well as a Proposed Conditions sheet to provide conceptual-level details. FEA will produce an alternatives analysis memo, summarizing the key factors in each design, including estimated phosphorus reductions and other co-benefits.

Project Assessment Meeting

FEA will meet with NRPC and Town staff to review the existing conditions memo, alternatives analysis memo, and the 10% design plans, then discuss how to proceed, including selection of a preferred alternative. Our team will document the meeting and circulate minutes to the Town and NRPC for review.

Estimated Fee: \$13,033

Task 2 Deliverables:

- Existing Conditions Plan (PDF)
- Alternatives Analysis Memo and Conceptual (10%) Design Plans (PDF)
- Design Review Meeting Minutes (PDF)

Task 3: Preliminary Cost Estimate and Permitting Documentation

Preliminary Cost Opinion

Based on the 10% conceptual design, FEA will prepare a preliminary engineer's opinion of probable cost for the selected alternative using a combination of VTrans cost-estimating resources and experience with similar projects. The cost opinion will include materials, equipment, and labor. This estimate will also include anticipated future engineering and permitting fees, with a 20% construction contingency. The cost opinion will be updated following the completion of the 30% plans (Task 4).

Permit Coordination

FEA will identify all local, state, and federal permits needed for the project. Once permits are identified, FEA will reach out to the appropriate regulator and get written confirmation of the permitting requirements (need for permit, permit type, and any special conditions). FEA will prepare a regulatory summary memo that will be incorporated into the preliminary design report at the end of the project.



Based on FEA's current understanding of the project, the following permits may be required:

- VTANR Stream Alteration Permit
- USACE Nationwide Permit
- VTANR Wetlands Permit (possible allowed use under VWR 6.23)

Estimated Fee: \$3,150

Task 3 Deliverables:

- Preliminary Opinion of Probable Cost (PDF)
- Permit Summary Memo

Task 4: Preliminary Design (30%) and Final Report

Preliminary (30%) Design

FEA will progress the design to a 30% preliminary plan set to be reviewed by NRPC, the Town, regulators, and landowners as needed. The plans will include:

- Proposed Site Plan (layout) with streams, wetlands, construction limits, culvert replacement details, restoration treatments, and the best-available property boundaries.
- Typical bank/channel stabilization cross sections at critical locations.
- Culvert specifications.
- Preliminary construction details and explanation of construction techniques.
- Quantification of all natural resources impacts for regulatory purposes.

Design Review Meeting

FEA will meet with NRPC and Town staff to review the preliminary design plans and answer any questions about the proposed project elements. Our team will document the meeting and circulate minutes to the Town and NRPC for review.

Final Report

FEA will develop a Final Report that synthesizes prior completed reporting. The report will include a summary of the field work, alternatives analysis, H&H analysis, floodplain connectivity/water quality benefits, phosphorus reduction benefits, the basis for the preliminary design, explanation of the preliminary cost opinion, and potential permitting needs.

Estimated Fee: \$5,540

Task 4 Deliverables:

- Preliminary (30%) Design Plans (PDF)
- Design Review Meeting Minutes (PDF)
- Final Report (PDF)



Section 3 – Proposed Project Schedule & Deliverables

Project Schedule and Deliverables

Included in Table 2 is a schedule outlining the specific tasks and milestones proposed by our Team. The project will be completed no later than June 15, 2027. Final deliverables are numbered and listed below the schedule.

Table 2: Proposed Estimated Project Schedule

Tasks and Subtask		2026					2027					
		Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
1	Project Initiation											
	Contract Executed											
	Kickoff Site Visit		1									
2	Existing Conditions Report & Alternatives Analysis											
	Desktop Data Collection											
	Topographic & Bathymetric Data Collection											
	Existing Conditions Plan			2								
	Alternatives Analysis Memo & Conceptual (10%) Design Plans					3						
3	Preliminary Cost Estimate and Permitting Documentation											
	Preliminary Cost Opinion										5	
	Permit Coordination										6	
4	Preliminary Design & Report											
	Preliminary (30%) Design											7
	Design Review Meeting (30% Designs)											8
	Preliminary Design Report											9

Deliverables:

- | | |
|---------------------------------|----------------------------------|
| 1 Kick-off Meeting Minutes | 6 Permit Summary Memo |
| 2 Existing Conditions Plan | 7 Preliminary Design Plans (30%) |
| 3 Alternatives Analysis Memo | 8 Design Review Meeting Minutes |
| 4 Design Review Meeting Minutes | 9 Preliminary Design Report |
| 5 Preliminary Cost Opinion | |

Section 4– Cost Proposal

On the following page is FEA's cost proposal with hours and expenses broken down by project task. Team member initials correspond to the biographies provided in Section 5. FEA proposes to complete the Tasks outlined above in Section 2 for a total fee of **\$23,546**.



 Fitzgerald Environmental						
<u>Budget Estimate</u> Northwest Regional Planning Commission Silver Lake Road Floodplain & Wetland Restoration, Georgia, VT						
						Dated: 8/7/2026
Task	Labor Hours (Staff Initials)				Direct Expenses	Task Cost
	Principal / Hydrologist (EF)	Water Resources Engineer (JD)	Water Resources Designer (AM)	Staff Scientist (LO)		
1 Project Initiation						
FEA Internal Kick-off; Kickoff Meeting with NRPC and Town	6	4	4	2	\$23	
				Subtotal Task 1:		\$1,823
2 Existing Conditions Report & Alternatives Analysis						
Desktop Data Collection; Field Preparation	1	1	2	4	\$23	
Field Survey (Topography, Bathymetry, Geomorphic, Wetlands, Structures)	4	10	10	10	\$371	
Existing Conditions Plan	1	1	12	4		
Existing Conditions Hydrology/Hydraulics Modeling	1	2	2	16		
Evaluate Alternatives (10% Plans); P credit estimates; Summary Memo	2	4	32	8		
Meeting with NRPC/Town to Discuss the 10% Designs; Meeting minutes	1	1	2			
				Subtotal Task 2:		\$13,033
3 Preliminary Cost Estimate & Permitting Documentation						
Preliminary Opinion of Probable Cost	1	2	4			
Coordinate with Regulators and Confirm Permit Requirements	4	2	8			
Permitting Memo	2	2	4			
				Subtotal Task 3:		\$3,150
4 Preliminary (30%) Design & Report						
Prepare Preliminary (30%) Plans	2	4	16			
Meeting with NRPC/Town to Discuss the 30% Designs; Meeting minutes	1	1	2			
Preliminary Design Report and Project Closeout	4	4	16	4		
				Subtotal Task 4:		\$5,540
Summary						
(1) Total Hours	30	38	114	48		
(2) Hourly Rate	\$130.00	\$120.00	\$95.00	\$80.00		
(3) Total Labor Fees	\$3,900	\$4,560	\$10,830	\$3,840		\$23,130
(4) Total Direct Expenses					\$416	\$416
Total Labor Hours:				230	Total Project Budget:	
					\$23,546	



Attachment C: Standard State Provisions for Contracts and Grants

Revised: February 13, 2026

- 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. Where an authorized individual is either required to click-through or otherwise accept, or made subject to, any electronic terms and conditions to use or access any product or service provided hereunder, such terms and conditions are not binding and shall have no force or effect. Further, any terms and conditions of Party’s invoice, acknowledgment, confirmation, or similar document, shall not apply, and any such terms and conditions on any such document are objected to without need of further notice or objection.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont without resort to conflict of laws principles. 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 regarding 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:

- A. 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.
 - B. 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.
 - C. 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.
 - D. 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:** During the term of this Agreement, Party, at its expense, shall maintain in full force and effect the insurance coverages set forth in the Vermont State Insurance Specification in effect at the time of incorporation of this Attachment C into this Agreement. The terms of the Vermont State Insurance Specification are hereby incorporated by reference into this Attachment C as if fully set forth herein. A copy of the [Vermont State Insurance Specification](https://aoa.vermont.gov/Risk-Claims-COI) is available at: <https://aoa.vermont.gov/Risk-Claims-COI>.
- 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: Any liability to the State under the Vermont False Claims Act (32 V.S.A. § 630 et seq.) 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. Use and Protection of State Information:

A. As between the State and Party, "State Data" includes all data received, obtained, or generated by the Party in connection with performance under this Agreement. Party acknowledges that certain State Data to which the Party may have access may contain information that is deemed confidential by the State, or which is otherwise confidential by law, rule, or practice, or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("Confidential State Data").

B. With respect to State Data, Party shall:

- i. take reasonable precautions for its protection;
- ii. not rent, sell, publish, share, or otherwise appropriate it; and
- iii. upon termination of this Agreement for any reason, Party shall dispose of or retain State Data if and to the extent required by this Agreement, law, or regulation, or otherwise requested in writing by the State.

C. With respect to Confidential State Data, Party shall:

- i. strictly maintain its confidentiality;
- ii. not collect, access, use, or disclose it except as necessary to provide services to the State under this Agreement;
- iii. provide at a minimum the same care to avoid disclosure or unauthorized use as it provides to protect its own similar confidential and proprietary information;
- iv. implement and maintain administrative, technical, and physical safeguards and controls to protect against any anticipated threats or hazards or unauthorized access or use;
- v. promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or



request for Confidential State Data so that the State may seek an appropriate protective order; and

- vi. upon termination of this Agreement for any reason, and except as necessary to comply with subsection B.iii above in this section, return or destroy all Confidential State Data remaining in its possession or control.

D. If Party is provided or accesses, creates, collects, processes, receives, stores, or transmits Confidential State Data in any electronic form or media, Party shall utilize:

- i. industry-standard firewall protection;
- ii. multi-factor authentication controls;
- iii. encryption of electronic Confidential State Data while in transit and at rest;
- iv. measures to ensure that the State Data shall not be altered without the prior written consent of the State;
- v. measures to protect against destruction, loss, or damage of State Data due to potential environmental hazards, such as fire and water damage;
- vi. training to implement the information security measures; and
- vii. monitoring of the security of any portions of the Party's systems that are used in the provision of the services against intrusion.

E. No Confidential 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 United States, except with the express written permission of the State.

F. Party shall notify the State within twenty-four hours after becoming aware of any unauthorized destruction, loss, alteration, disclosure of, or access to, any State Data.

G. State of Vermont Cybersecurity Standard Update: Party confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update in effect at the time of incorporation of this Attachment C into this Agreement. The [State of Vermont Cybersecurity Standard Update](https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives) prohibits the use of certain branded products in State information systems or any vendor system, and a copy is available at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>.

H. In addition to the requirements of this Section 12, Party shall comply with any additional requirements regarding the protection of data that may be included in this Agreement or required by law or regulation.



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 this 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. Nondiscrimination:

A. **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, and shall include this provision in all subcontracts for work performed in Vermont. 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.

B. **IT Accessibility Standards:** Party acknowledges and agrees that any digital products, services, and content provided under this Agreement, whether supporting State programs or intended for the State's use, must adhere to the State's accessibility standards and guidelines as established by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (28 CFR Part 35) (hereinafter, for purposes of this subsection B, the “Rule”). The Rule requires communication and content on web platforms and mobile applications to meet or exceed specific success criteria and conformance requirements. The Rule applies to websites, software applications, electronic reports and output documentation, and training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), and other digital content. Information concerning the Rule and the State’s Universal Digital Accessibility resources are available on the [State’s Communications and Marketing Office website](https://cmo.vermont.gov) at: <https://cmo.vermont.gov>.

- i. Party warrants that the software, products, services, or subscriptions provided under this Agreement, whether supporting State programs or intended for the State's use (hereinafter, for purposes of this subsection B, “Products”) comply with the Rule and agrees to defend, indemnify, and hold harmless the State against any claims related to a Product’s non-compliance with the Rule.
- ii. When updates or upgrades are made to the Products available through this Agreement, the Party agrees:



- a) to develop functionality that supports accessibility in conformance with the Rule and, if any issues arise due to nonconformance with the Rule, to provide alternative solutions upon request at no additional cost to the State; and
 - b) to document how the changes will impact or improve the Product's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the update or upgrade, occurring within an agreed timeframe sufficient for the State to review the changes and either approve them or request a remediation plan from the Party.
 - iii. If agreed-upon updates fail to improve the Product's accessibility or usability as planned, such failure shall be a material breach of this Agreement.
- 15. Offset:** The State may offset any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any offset of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in 32 V.S.A. § 3113.
- 16. Taxes Due to the State:** 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.
- 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, Party is not under an obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order. 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), as amended by Section 17 of Act No. 142 (2010) and by Section 6 of Act No. 50 (2011).

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 ("Confidentiality and Protection of State Information"); 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. Regulation of Hydrofluorocarbons:** Party confirms that all products provided to or for the use of the State under this Agreement shall not contain hydrofluorocarbons, as prohibited under 10 V.S.A. § 586.
- 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](https://bgs.vermont.gov/purchasing-contracting/debarment) at: <https://bgs.vermont.gov/purchasing-contracting/debarment>.
- 23. Conflict of Interest:**
- A. **Organizational Conflict of Interest (OCOI):** An OCOI arises when the Party as a business entity has an interest (for example, customers, partners, contracts) that could undermine, or reasonably be perceived to undermine, its faithful and unbiased performance of this Agreement.
 - B. **Personal Conflict of Interest (PCOI):** A PCOI arises when an interest held by an agent or employee of the Party could undermine, or reasonably be perceived to undermine, the faithful and unbiased performance of this Agreement.
 - C. **Requirements:** Party shall not have PCOIs or OCOIs with respect to this Agreement nor with respect to any other agreement(s) it may hold with the State. To ensure that PCOIs and OCOIs do not exist, the Party shall:
 - i. Conduct an internal review of its current affiliations and activities and employees and agents and identify actual, potential, or reasonably perceived PCOIs or OCOIs relative to this Agreement.

- ii. Maintain effective oversight to verify compliance with PCOI and OCOI prohibitions.
- iii. Prevent PCOIs, including not assigning or allowing an employee to perform any role or task under this Agreement for which the Party has identified a PCOI.
- iv. Inform employees and agents of their obligation to disclose PCOIs and to comply with the confidentiality provisions and any non-disclosure agreement required by this Agreement.
- v. Make an immediate and full disclosure, in writing, to the State point of contact for this Agreement of any actual or potential PCOI or OCOI or the existence of any facts that may cause a reasonably prudent person to perceive a PCOI or OCOI with respect to this Agreement.

D. Remedies:

- i. In the event the State determines that a PCOI or OCOI exists, the State will discuss the matter with the Party to determine whether the PCOI or OCOI can be mitigated to the State's satisfaction.
- ii. If the State does not deem mitigation practicable, the State may terminate all or a portion of this Agreement for default or pursue such other remedies as may be permitted by law or this Agreement.
- iii. If Party fails to disclose facts pertaining to the existence of a potential or actual PCOI or misrepresents relevant information to the State, the State may terminate this Agreement for default or pursue such other remedies as may be permitted by law or this Agreement.

24. Vermont Public Records Act: Party acknowledges and agrees that this Agreement, any and all information obtained by the State from the Party in connection with this Agreement, and any obligations of the State to maintain the confidentiality of information 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 lockouts) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not use the State's logo or otherwise 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 this Agreement at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement 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 Agreement immediately, and the State shall have no obligation to pay Party 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 Federal Audit Clearinghouse within nine months. If a single audit is not required, only the Subrecipient Annual Report is required. A Single Audit is required if the subrecipient expends \$1,000,000 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.
- 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 \$1,000, 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 State Provisions)