

SFY2021 Ecosystem Restoration Grant Round: Dam Removal Projects

Release Date: March 26, 2021

Proposals Due: April 22, 2021 (by 4:00 pm)

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

Introduction and Purpose

The Vermont Department of Environmental Conservation (DEC) Clean Water Initiative Program (CWIP) is pleased to announce the state fiscal year (SFY) 2021 Request for Proposals (RFP) for Ecosystem Restoration Grants for Dam Removal Projects. These grants are supported by the state Clean Water Fund. The goal of the program is to support projects that reduce sediment and nutrient pollution, including phosphorus, from runoff and soil erosion that discharge into the state's rivers, streams, lakes, ponds, and wetlands. Funds are available solely for the design or implementation of dam removal projects. Minimum funding request is \$20,000.

Each dam removal project is unique. These projects can range from simple, quick, and inexpensive to remove, to more complexity requiring more effort and cost, and to the high range of very complex and requiring great time and effort and very expensive to design and implement.

The complexity of a dam removal project will drive the requirements for the various local, state, and federal permits. Permitting requirements must be identified early in the process *with* documentation of the replies reported by local, state, and federal regulatory staff as to whether a project is jurisdictional (i.e., requires a permit) or non-jurisdictional (i.e., does not require a permit) for each program.

Applicants are expected to have reviewed the details and eligibility requirements listed in the DEC CWIP State Fiscal Year (SFY) 2021 Funding Policy, available at: https://dec.vermont.gov/sites/dec/files/wsm/erp/docs/2021-02-04_FINAL_FY21_CWIPFundingPolicy_signed.pdf. Proposals should address the Funding Policy's dam removal definitions, standards, and performance measures (Funding Policy Appendix B) and standard milestones and deliverables (Funding Policy Appendix C).

Goals and Objectives

A dam removal project is recognized as a temporary perturbation of the biological, chemical, and physical function of the stream or river environment that results in a short-term adverse impact for a long-term beneficial gain.

The primary goals and objectives for CWIP-funded dam removal projects are to:

1. Restore dynamic stream equilibrium (i.e., stream's least erosive state) in the former impoundment and proximity of the former dam;
2. Improve the water quality of the stream or river in the project area and in downstream receiving waters such as ponds and lakes in the watershed; and
3. Restore wetlands in the former impoundment if present in the landscape.

The following additional benefits may also be achieved through dam removal projects:

4. Restore floodplain connectivity to lower flood water elevations to alleviate potential community flood hazards and risks of bank erosion and inundation;
5. Restore aquatic organism passage (AOP) for fish and aquatic organisms and wildlife; and
6. Restore connectivity of habitat blocks for bird life and terrestrial wildlife.

Scope of Work

The following dam removal project types are eligible for funding under this RFP (note that a proposal submission may only address one of the following phases):

- Dam Removal – Preliminary Engineering Design,
- Dam Removal – Final Engineering Design, and
- Dam Removal – Implementation.

Proposals must meet the CWIP SFY 2021 Funding Policy's eligibility requirements and dam removal project type definitions, standards, and performance measures (Funding Policy Appendix B) and standard milestones and deliverables (Funding Policy Appendix C), which vary by dam removal project type. Proposals are for individual projects only. A proposal cannot address multiple projects.

Proposals submitted in response to this RFP must include, at a minimum, the following information.

Dam Removal – Preliminary (30%) Engineering Design

Definition and standards: Preliminary determination of feasibility and design of a dam removal project to restore hydrologic connectivity of surface waters. Work includes determining landowner interest, site/design considerations, permitting needs, and overall suitability for implementing project. May involve feasibility or alternatives analysis.

Performance measures: Number of preliminary (30%) designs completed

Milestones and deliverables:

Milestones (non-negotiable)	Deliverables (non-negotiable)	Due Date (grantee indicate in proposal)	Payment (grantee indicate in proposal)
Project initiated; RFP issued and contractor selected (if applicable)	Copy of RFP, signed contract, and statement of reasoning for contractor selection (if applicable)		
Feasibility/alternatives analysis completed; identified permitting needs; pre-permitting meeting	Feasibility/alternatives analysis report (includes list of permitting needs, water draw down needs and methods, site constraints (e.g., site access location considerations, access easement needs), needs and methods to address impacts to natural resources (e.g., rare or endangered species, invasive species) and project locator map ¹		
Design concepts completed	Design concepts report including updated conceptual site plan, design criteria for all aspects of the design, and construction cost-estimates		
Stakeholder community meeting (if applicable)	Meeting notes, appropriate agreements (landowner /town) for moving forward		
Check-in and approval for topographic and boundary survey; geotechnical report	Report of the topographic and boundary survey; geotechnical report if determined to be applicable or description of why these are not applicable ²		
30% design complete	Preliminary Design Final Report (includes synthesis of prior completed project deliverables, 30% design, written landowner commitment to next project step, and cost-estimate)		
Project complete	Final Performance Report ³ ; press release; Form 430-M		

Dam Removal – Preliminary (30%) Engineering Design Proposals must also address the following:

1. Project locator map created using the ANR Atlas Clean Water Initiative Program Grant Screening Layer (<http://anrmaps.vermont.gov/websites/anra5//>), which identifies potential natural resource conflicts and permitting needs for a given area. Project locator maps should be downloaded from the Atlas and submitted as part of the proposal PDF. See CWIP Project Locator Map and Natural Resources Screening Instructions at: <https://dec.vermont.gov/water-investment/cwi/grants/resources#App>.

¹ Project locator map created using the ANR Atlas Clean Water Initiative Program Grant Screening Layer (<http://anrmaps.vermont.gov/websites/anra5//>), which identifies potential natural resource conflicts and permitting needs for a given area. Project locator maps should be downloaded from the Atlas and submitted as part of the proposal PDF. See CWIP Project Locator Map and Natural Resources Screening Instructions at: <https://dec.vermont.gov/water-investment/cwi/grants/resources#App>.

² If both the grant manager and the engineer agree that topographic and boundary surveys and/or a geotechnical report are not necessary due to the nature of the dam removal location, please provide a justification why they are not necessary. Grantee will not be paid for this deliverable if surveys were not completed.

³ The Final Performance Report is the required final deliverable for each Clean Water Initiative Program grant/contract agreement. The information provided in this report is used for annual reporting to the Vermont State Legislature and US EPA. Templates are provided in Attachment E in all agreements. The Final Performance Report is also available at: <https://dec.vermont.gov/water-investment/cwi/grants/resources>.

2. Previously identified data gaps in research and/or field work for use in developing a 30% progress dam removal sketch plan and a first or updated engineer’s opinion of probable cost including project management time and costs of the grantee in the total project cost.
3. If not already completed, investigate the absence or presence and operability of low-level water outlets for control of a water level drawdown and any additional means and methods that may be applicable for a controlled water drawdown.
4. If not already completed, prepare a list of threatened or endangered and non-native, invasive plants and wildlife and a work plan to protect the desirable plants and wildlife and any treatment methods to reduce the effect of undesirable plants and wildlife.
5. Participate in the initial, any interim and the project close-out stakeholder meetings and prepare meeting minutes for the record.
6. Identify data gaps to be addressed in the next project phase.
7. Prepare a project memorandum with pictures and graphics that summarizes the methodology used, information found, results of the evaluation, conclusions and recommended design option.
8. Submit the 30% design plans and documents via email in PDF format for check in with regulatory staff.

Dam Removal – Final (100%) Engineering Design

Definition and standards: Final design of dam removal project to restore hydrologic connectivity of surface waters. Work includes obtaining any permits required.

Performance measures: Number of final (100%) designs completed

Milestones and deliverables:

Milestones (non-negotiable)	Deliverables (non-negotiable)	Due Date (grantee indicate in proposal)	Payment (grantee indicate in proposal)
Project initiated; RFP issued and contractor selected (if applicable)	Copy of RFP, signed contract, and statement of reasoning for contractor selection (if applicable)		
Determination of required permits	Documentation of required permits for project implementation, indicating potential challenges/conflicts for obtaining permit (if applicable) and project locator map ⁴		
Determination of O&M responsible party	Documentation of O&M responsible party once project is implemented		
60% design complete	Intermediate Design Report (includes synthesis of prior completed project deliverables and updates based on review of 30% design review and permitting considerations, 60% design, written landowner commitment to next project step, and cost-estimate)		

⁴ Project locator map created using the ANR Atlas Clean Water Initiative Program Grant Screening Layer (<http://anrmaps.vermont.gov/websites/anra5/>), which identifies potential natural resource conflicts and permitting needs for a given area. Project locator maps should be downloaded from the Atlas and submitted as part of the proposal PDF. See CWIP Project Locator Map and Natural Resources Screening Instructions at: <https://dec.vermont.gov/water-investment/cwi/grants/resources#App>.

90% design complete (if applicable)	Intermediate Design Report (includes synthesis of prior completed project deliverables, 90% designs, written landowner commitment to implement project, and final cost-estimate, if applicable)		
100% design complete	Final Design Report (includes synthesis of prior completed project deliverables, 100% designs, written landowner commitment to implement project, and final cost-estimate)		
Required permits secured	Permit documentation		
Project complete	Final Performance Report ⁵ ; press release; Form 430-M		

Dam Removal – Final (100%) Engineering Design Proposals must also address the following:

1. Project locator map created using the ANR Atlas Clean Water Initiative Program Grant Screening Layer (<http://anrmaps.vermont.gov/websites/anra5//>), which identifies potential natural resource conflicts and permitting needs for a given area. Project locator maps should be downloaded from the Atlas and submitted as part of the proposal PDF. See CWIP Project Locator Map and Natural Resources Screening Instructions at: <https://dec.vermont.gov/water-investment/cwi/grants/resources#App>.
2. If not already completed, utilize or prepare the 30% conceptual design plans for review. Complete any other aspects of 10% feasibility or 30% design not already completed.
3. Develop the 60% progress design plans for review. Prepare a Construction Timeline and Engineer’s Opinion of Probable Cost based on the 60% pre-final design documents.
4. Develop 90% pre-final design drawings including the cover sheet, notes, site plan, stream flow profile and site cross-sections, notes and details.
5. Prepare a Construction Timeline and Engineer’s Opinion of Probable Cost based on the 90% pre-final design documents.
6. Submit the 90% design documents via email in PDF format.
7. Submit the 90% design plans and documents for permitting to local, state and federal programs for review. Address the submittal review comments to be incorporated in a 100% design package for permit approvals for implementation.
8. Prepare a Project Memorandum with pictures and graphics that summarizes the methodology used, information found, results of the evaluation, selected design option, conclusions and final updated Engineer’s Opinion of Probable Cost and include the Project Management time and costs of the Grantee in the total project cost.
9. Submit the 100% design plans and documents via email in PDF format. Those dam removal projects that proceed directly to the 100% Design level shall have progress check-ins with local, state and federal staff and funding programs at the 10%, 30% and 60% design phases.
10. Provide O&M document committing the landowner to ongoing maintenance. The O&M plan shall discuss restoring *dynamic stream equilibrium* as a goal and objective for clarity for the landowner and/or the public relative to the next two items in the Implementation Phase.

⁵ The Final Performance Report is the required final deliverable for each Clean Water Initiative Program grant/contract agreement. The information provided in this report is used for annual reporting to the Vermont State Legislature and US EPA. Templates are provided in Attachment E in all agreements. The Final Performance Report is also available at: <https://dec.vermont.gov/water-investment/cwi/grants/resources>.

Dam Removal – Implementation

Definition and standards: Implementation of dam removal project to restore hydrologic connectivity of surface waters. Permit(s) and operation and maintenance plan agreement(s) are in place prior to construction.

Performance measures:

- Acres of floodplain restored
- Linear feet of stream restored
- Stream miles reconnected for stream equilibrium /aquatic organism passage

Milestones and deliverables:

Milestones (non-negotiable)	Deliverables (non-negotiable)	Due Date (grantee indicate in proposal)	Payment (grantee indicate in proposal)
Project initiated; RFP issued and contractor selected (if applicable)	Copy of RFP, signed contract, and statement of reasoning for contractor selection (if applicable); photo of site pre-implementation		
Verification of permits secured	Permit documentation		
Pre-construction kick-off meeting	Site visit, walk through of the site with plans, evaluate any needs/issues/considerations for plan adjustments; documentation of meeting and any notes for plan updates		
Final construction walkthrough	Site visit notes, finalized construction notes for any design/plan updates		
Implementation update(s); Clean Water Project Sign installed during construction if the project is considered publicly visible.	Interim report(s) (includes summary of work to date, percent progress, and construction photos, including photo of Clean Water Project Sign ⁶ , if applicable)		
Dam removed; restoration work completed			
O&M plan created and signed	Signed 10-year (minimum) DEC Operation and Maintenance Plan and Agreement ⁷		
Project complete	Final Performance Report ⁸ ; press release; post-implementation photo; Form 430-M		

⁶ Clean Water Project signs are required on publicly visible implementation projects, if stated in the grant agreement and the project meets the requirements. Signs should be posted during project construction if the duration of project construction is at least two weeks or if duration of construction is less than two weeks, but the value of the project warrants signage. Signs cannot be posted in areas that may cause traffic hazards and must be located outside road right-of-way. A photo of the sign in place should be submitted with the deliverables. Further information is available at: https://dec.vermont.gov/sites/dec/files/DEC-CWIP_CleanWaterProjectSignsGuidance_FINAL.pdf.

⁷ The DEC Operation and Maintenance (O&M) Plan and Agreement is a required form for implementation projects receiving Clean Water Initiative Program funds. The DEC O&M Plan and Agreement template is available at: <https://dec.vermont.gov/water-investment/cwi/grants/resources>.

⁸ The Final Performance Report is the required final deliverable for each Clean Water Initiative Program grant/contract agreement. The information provided in this report is used for annual reporting to the Vermont State Legislature and US EPA. Templates are provided in Attachment E in all agreements. The Final Performance Report is also available at: <https://dec.vermont.gov/water-investment/cwi/grants/resources>.

Dam Removal – Implementation Proposals must also address the following:

1. Project locator map created using the ANR Atlas Clean Water Initiative Program Grant Screening Layer (<http://anrmaps.vermont.gov/websites/anra5//>), which identifies potential natural resource conflicts and permitting needs for a given area. Project locator maps should be downloaded from the Atlas and submitted as part of the proposal PDF. See CWIP Project Locator Map and Natural Resources Screening Instructions at: <https://dec.vermont.gov/water-investment/cwi/grants/resources#App>.
2. Complete implementation as agreed following 100% design permit approvals.
3. Submit final report, documentation, before and after photos and signed O&M. The completed project will likely require 3 to 5-years of monitoring of the newly planted riparian vegetation to successfully establish an 80% survival rate of the newly planted grasses, shrubs and trees and report to the US Army Corps of Engineers, VDF&W and the State Rivers Program on the status and a plan for any required re-seeding and/or re-planting of the project site.
4. The US Army Corps of Engineers, VDF&W, State Rivers Program and Grantee will review and approve the monitoring status and any additional O&M plan or revisions for re-seeding and/or re-planting of the project site.

Eligibility Requirements

Respondents to this RFP should be aware that they will need to agree to the State of Vermont Customary Contract Provisions (Attachment C) in order to execute an agreement for this project. These provisions, which include insurance requirements, are attached to this RFP for reference (Attachment C).

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

Procurement

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

Funding and Method of Payment

Funding for the RFP is contingent upon available funding. All payments will be made after satisfactory completion of each deliverable as outlined in an agreement between the State and the selected entity.

The State anticipates up to \$500,000 to be available for this project in total. Final funding level or amount will be a function of the nature and quality of the responses received.

Project Timeline

Pending the schedule of agreement execution, it is anticipated that this work will be completed by November 1, 2023.

Anticipated Project Schedule:

Date	Task
Friday, March 26, 2021	RFP distributed on EBB
March 26–April 9, 2021 (4:00 PM EST)	RFP Q&A Period (send questions to ANR.WSMDERP@vermont.gov using the subject line “SFY21 ERP Dam Removal Question – (insert org short name).”
Friday, April 9, 2021 (4:00 PM EST)	RFP Questions period closes
Thursday, April 15, 2021	Answers posted on EBB
Thursday, April 22, 2021 (4:00 PM EST)	Deadline for submission of proposals
Week of May 17, 2021	Applicant notification
By November 1, 2023	Final deliverables compiled/submitted
December 1, 2023	Project closure

Deadlines and Content of Proposals

Submittal: All proposals must be submitted electronically via email to Shalini Suryanarayana, ANR.WSMDERP@vermont.gov, by **April 22, 2021, 4:00 pm EST** using the subject line “SFY21 ERP Dam Removal Proposal – (insert org short name)”

Bid opening: Proposals are anticipated to be opened **April 22, 2021, at 4:00 pm EST**.

Notification: Proposal(s) preliminarily accepted by DEC are anticipated to be notified no later than the week of **May 17, 2021**.

Proposal Outline and Scoring Criteria:

All proposals must include the following content.

1. Proposals must clearly address each of the selection criteria identified in this RFP below.
2. A statement identifying:
 - a. A single point of contact with all contact information.
 - b. Type of organization (Municipality, Non-profit, Corporation, Sole Proprietor, LLC) and address.
 - c. Name, title, and email address of authorized contract signer.
 - d. A detailed description of the organization’s experience with dam removal implementation and stream/river channel restoration and project staff qualifications and experience. This can include resumes, reports, and descriptions of expertise.
 - e. Project details. This should include a detailed summary of how the applicant will meet the scope of work, described above based on project type, as well as the CWIP SFY 2021 Funding Policy dam removal definitions, standards, and performance measures (Funding Policy Appendix B) and standard milestones and deliverables (Funding Policy Appendix C).
 - f. Intent to involve any under-represented groups in the project (also see “Scoring Criteria” below

for further details about this **optional** item).

- g. Project budget.
 - i. Provide the itemized budget of the project, including estimated labor and material costs to complete the project, by using the Budget template on the website at: <https://dec.vermont.gov/water-investment/cwi/grants/resources#App>. The budget template includes Excel formulas to automatically calculate the total budget costs.
 - ii. Ecosystem Restoration Grant funds will only support expenses directly related to the project. The budget can only include eligible expenses pursuant to the CWIP SFY 2021 Funding Policy.
 - iii. The budget template includes columns for the total cost of each part of the project (personnel, travel, etc.), as well as a column for leveraged funds and the application request. Applicants are responsible for reviewing the budget form prior to submittal, to ensure calculations are in the budget form correctly.
 - iv. The budget will be scored on cost-effectiveness, completeness, and clarity. All costs listed in the budget (including all hourly rates, number of hours, description of supplies, leveraged funds, etc.) must be fully explained in the budget form. Lack of detail or clarity in the budget will negatively impact the scoring.
 - v. Any work to be contracted to a third party/project partner should be included in the “contractual/construction” line item.
 - vi. If the budget includes an indirect cost rate of 10% or greater, a negotiated indirect cost rate agreement (Federal NICRA or approved State entity such as VTrans) must be included in the application.
 - vii. DEC requires applicants to secure accurate estimates for the proposal’s budget, including working with contractors to secure quotes/bids during the proposal development process. The quote should be itemized and applies to any project requiring work to subcontracted and must be included in the attachments. Please attach to the application any quotes obtained for contractual/construction work or “other” line items, as found in the grant application budget table.
3. A completed Risk Assessment Questionnaire, found here: <https://dec.vermont.gov/sites/dec/files/aid/Finance/Risk%20Assessment.pdf>.
4. A completed Certificate of Good Standing (found here): <https://sos.vermont.gov/corporations/copies-certificates/>

Scoring Criteria:

- **25 points – Water Quality Benefit**
 - Proposed project achieves priority water quality goals and objectives described in RFP. Proposal demonstrates high nutrient and/or sediment reduction potential of dam removal project.
- **25 points – Qualifications and Experience of Staff**
 - Demonstrated experience working on dam removal and river/stream channel restoration projects.

- Familiarity with the Vermont Dam Safety Program requirements, wetland and floodplain restoration, water quality issues, and aquatic organism passage and aquatic and terrestrial habitat restoration.
- **25 points – Quality of Proposal**
 - Proposal is clear, concise, grammatically correct, and complete – addressing all aspects of the RFP and using current forms – and submitted correctly.
 - Proposal demonstrates an understanding of the project deliverables and adequately addresses and describes how the work will be accomplished in a timely and effective manner.
- **15 points – Budget/Cost**
 - Proposal includes budget (using current budget form). Budget is clear, complete, and cost-effective. Budget descriptions are easily understood. Budget items align with eligible costs, calculations are correct, itemized quote included in attachments, NICRA (if applicable) included in attachments.
- **5 points – Incentivize Leveraged Funding**
 - Project proposals will receive up to 5 points for leveraging funds from eligible sources defined in the CWIP SFY 2021 Funding Policy.

Points	Percent of Total Project Cost Covered with other Eligible Funding Sources
5	50% or greater
4	25-49%
3	11-24%
2	5-10%
1	0-4%

- **5 points – “JEDI” (Justice, Equity, Diversity, Inclusion)**
 - In support of goals to promote diversity and equity, projects that include under-represented groups, such as Minority or Women Owned Sub-Contractor Businesses, are encouraged.
 - If the involvement of under-represented groups is anticipated, please list the names of the entity/entities anticipated to be utilized, including the primary contact person, email address, and any other relevant information for each of them in item F of the proposal content information listed above.
 - For applicants seeking information about under-represented groups that could be involved in sub-contracting, you may wish to visit the VTrans Disadvantaged Business Enterprise Certification Site (see the DBE directory at <http://vtranscivilrights.vermont.gov/doingbusiness/dbe-center/directory>), the Building and General Services Minority and Women Owned Businesses directory (<https://bgs.vermont.gov/facilities/forms/minority-women>), or the Vermont Business Registry EBB site where you can filter to see American Indian Owned, Minority Owned or Women Owned Businesses (under the “Business Attributes” filter found at <https://www.vermontbusinessregistry.com/BusinessSearch.aspx>). You are not limited to these sources to identify under-represented groups who you could include in your project.
 - *Please be advised that although optional, a listing of intent to work with an under-represented group will make your proposal eligible for up to 5 additional points in scoring.*

Selection

Proposals will be reviewed and evaluated by three or more DEC staff members. Review assistance may be sought from other interested parties having relevant knowledge. Selection of a contractor will be based on the scoring criteria described above.

The selection committee may elect to interview consultants prior to final selection.

Reservation of State's Rights

The State reserves the right:

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

Insurance

Respondents to this RFP should be aware that they will need to agree to the State of Vermont Customary Contract Provisions (Attachment C) in order to execute an agreement for this project. A sample of an organization's Certificate of Insurance is available at http://dec.vermont.gov/sites/dec/files/aid/Finance/COI_Organization.pdf

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

Confidentiality

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

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

Attachments

- Attachment A: SFA – Standard Contract for Services
- Attachment C – Standard State Provisions for Contracts and Grants, Revised December 15, 2017

Attachment A: SFA – Standard Contract for Services



Vermont Department of Environmental Conservation

Agency of Natural Resources

SFA - STANDARD GRANT AGREEMENT

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

**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)