ATTACHMENT D2: CONSTRUCTION

**STATE OF VERMONT**

**STATEMENT OF WORK AGREEMENT**

(NOTE: Text that appears in orange letters is instructive only and should be deleted from the final SOW-Agreement. Text in yellow highlighting must be updated or deleted. Utilize or delete paragraphs as appropriate to the agreement. Text that appears in black letters should be included in the agreement as is.)

SOW-AGREEMENT #\*\*\*

SOW-RFP PROJECT TITLE \*\*\*(If using SEP funds, project title must include prefix “SEP14:”)

PRE-QUALIFICATION CONTRACT # \*\*\* (“Master Agreement”)

This is a Statement of Work Agreement (“SOW Agreement”) between the State of Vermont, [CONTRACTING AGENCY] (hereafter called “State”) and \*\*\*, with principal place of business at \*\*\*, (hereafter called “Contractor”). This SOW Agreement is entered into in accordance with the above-identified Master Agreement. The parties acknowledge and agree that all of the terms and conditions of the Master Agreement are hereby incorporated by reference into this SOW Agreement. This SOW Agreement supplements the Master Agreement only as to the below provisions that define project scope of work.  Any other provisions, including those purporting to create any additional State obligation, or those that would in any way alter or qualify any term or condition of the Master Contract, shall be deemed null and void. This SOW Agreement shall supplement the Master Agreement and any provisions of this SOW Agreement which purport to amend, conflict or supersede the Master Agreement shall be void and have no effect.  For purposes of this SOW Agreement, the terms and conditions of the Master Agreement shall take precedence and supersede in the event of any ambiguity, conflict or inconsistency with the provisions in this SOW Agreement, including any attachments hereto.

1. **Time for Performance**
   1. The term of this SOW Agreement shall begin on \*\*\* and end on \*\*\* (the “Initial Term”). The Initial Term may be extended as the parties may agree. The State may terminate this SOW for convenience upon thirty days prior written notice to the Contractor. If the Master Agreement should expire or otherwise terminate prior to the end of the term of this SOW Agreement, this SOW Agreement shall continue to the end of its existing term, unless or until terminated in accordance with the terms of this SOW Agreement, and the Parties acknowledge and agree that the terms of the Master Agreement shall survive and apply to this SOW Agreement.
2. **Statement of Work**
   1. The Contractor shall, in full satisfaction of the specific requirements of this SOW Agreement, provide the services set forth herein. These services shall be provided in accordance with the Master Agreement and this SOW Agreement.
   2. **In Scope:** Copy and Paste Statement of Work Description and Deliverables from Attachment D1.
      1. \*\*\*

Delete the following paragraph if Submittal Exchange is not going to be used.

* + 1. **Electronic Submittals:**

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

1. Submittal Exchange® ([www.submittalexchange.com](http://www.submittalexchange.com)) shall be used to provide an on-line database and repository, which shall be used to transmit and track project-related documents. The intent for using this service is to expedite the construction process by reducing paperwork, improving information flow, and decreasing submittal review turnaround time.
2. Project submittals (shop drawing, product data and quality assurance submittals) shall be transmitted by the Contractor in PDF to Submittal Exchange®, where it will be tracked and stored for retrieval for review. After the submittal is reviewed it shall be uploaded back to Submittal Exchange® for action and use by the Contractor.
3. The service also tracks and stores documents related to the project such as Request for Information (RFI’s), Architect/Engineer's Supplemental Instructions (ASI), Information Bulletins (IB’s), CAD Coordination, Commission, Construction Change Directive (CCD), Contractor’s Daily Reports, Minutes, Photos, Quality Control, Shop Drawings, Testing, Closeout Documents including As-Built Drawings, Operations and Maintenance Manuals and other project related documents.
4. The electronic submittal process shall not be used for color samples, color charts, or physical material samples.
5. The Project Manager will coordinate the initial training between the Contractor and Submittal Exchange®.
6. **Plan Security Certification:**
   1. Contractor acknowledges that the plans pertaining to this project have been declared exempt from public record inspection for security reasons and have been disclosed to Contractor as per 1 V.S.A. §317(c)(32) for the performance of the Work specified herein. Contractor hereby expressly acknowledges and agrees to disclose plans only to a licensed architect, engineer, or Contractor who is bidding to work on, or actually performing work on, buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the state and specifically related to this project. Furthermore, Contractor agrees to abide by BGS Administrative Policy # 35 and any existing or future directives set forth by the State concerning the copying or distribution of the plans. Fraud, misrepresentation, falsification, or concealing or covering up material facts relating to compliance with these directives may result in one or more of the following actions: termination of the contract(s), suspension of bidding privileges, withholding, deducts, forfeiture of security bonds, and criminal prosecution punishable by imprisonment of up to five years and/or up to a $10,000 fine as per 13 V.S.A. §3016.

Delete the following paragraph if the total project cost is less than $50,000.

1. **Minority and Women Business Enterprises (M/WBE):**
   1. It is the policy of the State of Vermont that M/WBE's shall have the maximum opportunity to participate in the performance of contracts financed with state funds. All Bidders are encouraged to contact M/WBE's in an effort to recruit them to submit proposals for the work or portions thereof. The contractor shall not discriminate on the basis of race, color, national origin or sexual orientation in the award and performance of subcontracts. The Department of Buildings and General Services shall, in accordance with Executive Order #15-91, and for publicly funded capital construction projects exceeding $50,000.00, comply with the following provisions and requirements. After signing this Attachment D2: Construction – Statement of Work Agreement (SOW Agreement), return it to the project manager along with the M/WBE Reporting Form. The form includes space to report the name, address and phone number of the M/WBE's contacted, the trade, if their price was included in the bid proposal, and if not, the reason for rejection of their bid. The SOW Agreement will not be executed and no work can be performed on this project until the M/WBE Form is received. Failure to contact M/WBE's on or when projects require sub-contract work may constitute non-compliance and may result in forfeiture of future bidding privileges until resolved.

Delete the following paragraph if the total project cost is less than $100,000.

1. **Vermont Prevailing Wage Rate Requirements:**
   1. Vermont law requires this project comply with the prevailing wage rate requirements set forth in 29 V.S.A. §161. The full text of 29 V.S.A. §161 is available at: <https://legislature.vermont.gov/statutes/section/29/005/00161>.

Delete the following paragraph if the total project cost is less than $250,000.

1. **Worker Classification**:
   1. State Contracts Compliance Requirements: The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding $250,000.00 requires bidders comply with the following provisions and requirements. ((a) (3) For construction and transportation projects over $250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers¿ compensation coverage for all workers at the jobsite, and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request, and shall be available to the public.
2. **Waste Reduction Planning:**
   1. It is the intent of the State of Vermont to significantly reduce the amount of construction debris going into the total waste stream. Contractor is required to prepare and submit a Construction Site Waste Reduction Plan prior to execution of this SOW Agreement. A sample plan is available at: <https://dec.vermont.gov/waste-management/solid/materials-mgmt/construction-waste>. Failure to comply with this provision or a failure to comply with the plan itself will result in withholding of general conditions' money from the contractor's monthly requisition until Contractor has rectified the situation and is in full compliance with these provisions.

**PAYMENT PROVISIONS**

1. The maximum amount payable under this SOW Agreement is $\*\*\*. Payments of invoices shall be made in accordance with the payment provisions in the Master Agreement as further supplemented herein.
2. Contractor shall submit invoices to:

State of Vermont, Agency/Dept.

Attn: (Name of the Project Manager)

Address of Agency/Department requiring work

PM email address

1. **Invoices shall include the SOW Agreement # and Master Agreement # which appear atop the first page of this SOW Agreement.**
2. The State shall compensate the CONTRACTOR, in accordance with the Terms and Conditions of this Agreement in one of the following manners:

Project Manager needs to select one of the following paragraphs that identifies whether compensation is based on an Hourly Rate or Lump Sum Fixed Fee. Insert hourly rates as stated in the Master Agreement.

* 1. Compensation based on Hourly Rate. These rates are inclusive of all fees and expenses including mileage and travel time:

|  |  |  |  |
| --- | --- | --- | --- |
| Job Title | Hourly Rate | Off-hours, Weekends | Holidays |
| \*\*\* | $\*\*\* | $\*\*\* | $\*\*\* |

OR

* 1. Lump Sum or Fixed Fee: The maximum amount payable under this SOW Agreement is $\*\*\*. Payments of invoices shall be made in accordance with the payment provisions in the Master Agreement as further supplemented herein.

1. Contractor Material Mark-up: The State will not consider any contractor’s material mark-up exceeding 10% over Contractor’s actual cost.
2. The State will not consider any mark-up exceeding 5%, by the contractor, on any work performed by subcontractors.
3. The State will not consider any subcontractor’s material mark-up exceeding 10% over the subcontractor’s actual cost.
4. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State.
   1. Work required during weekends, holidays, or outside of the typical working hours described in Attachment A section 1.3, shall be entitled to a rate increase. Any rate increase shall be identified on the Price Schedule.
   2. Services may be issued on a time and materials basis or a fixed price. The following information is required on all invoices:
      1. All invoices must include the Contract # and numbered invoice for this contract;
      2. Time frame indicated of when work was performed;
      3. Copy of quote originally submitted;
      4. The agreed to markup for profit and overhead unless a previously agreed to billing schedule was approved in the contract;
      5. Certification that the contractor has no ownership (majority or minority) in any subcontractor they claim for profit and overhead;
      6. Provide supporting documentation of material costs, in accordance with the percentage specified in the contract. This supporting documentation is required for verification.

Delete this paragraph if the project is Lump Sum.

* 1. For projects billed on a Time & Materials basis, the following additional information must be included:
     1. Invoices shall include description of work, # of hours worked if applicable, including copies of time sheets and a certified payroll following the USDOL form (or comparable);
     2. 8.3.2 Copies of original receipts for all materials purchased or costs incurred as a result of the scope of work;

Delete paragraph if withholding does not apply or revise the percentage amount as needed.

1. The State shall withhold 10% of each payment as retainage. Upon completion of the SOW Project in accordance with the prescribed project timeline, and to the satisfaction of the State, Contractor may submit a single invoice for the amount of retainage.
2. Bonding: Project manager needs to select the appropriate bonding requirements for the project.
   1. Bonding is not required for this project.

OR

* 1. Full bonding is required for this project.

OR

* 1. Modified bonding is required for this project.

1. **REQUIRED CONTRACTOR CERTIFICATIONS**
   1. Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this SOW Agreement is signed, the Contractor 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.
   2. Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this SOW Agreement is signed, neither Contractor nor Contractor’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.

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

* 1. Child Support(Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor certifies that it is under no 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 as of the date of this SOW Agreement.

This document consists of \*\*\* pages.

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS SOW AGREEMENT.**

Insert SOW contractor Name

Signature Date

STATE OF VERMONT, Insert Requesting Agency or Department Name

Signature Date