

State of Vermont
 Buildings and General Services
 Office of Purchasing & Contracting
 109 State St
 Montpelier VT 05609-3001
 USA

CONTRACT



Supplier 0000047289
106 Associates
11 Ward Street
Burlington VT 05401
USA

Contract ID 000000000000000000045788	Page 1 of 2
Contract Dates 05/15/2023 to 05/14/2025	Origin CPS
Description: CPS RET Arch Historian	Contract Maximum \$300,000.00
Buyer Name John Kenny	Buyer Phone Approved

Phone #:

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
1		CPS Retainer Contract for Architectural Historian Services	JOB	0.01000	0.00	300,000.00

1. Parties. This is a contract for services between the State of Vermont, Buildings and General Services (hereinafter called "State") and 106 Associates with a principal place of business in Burlington, VT (hereinafter called "Contractor"). It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter. The subject matter of this contract is Retainer for Architectural Historian Services. Detailed services to be provided by Contractor are described in Attachment A.

3. Contract Term. The period of contractor's performance shall begin on May 15, 2023, and end on May 14, 2025. This contract can be extended 24 months with mutual agreement between both parties.

4. Entities Authorized to Use This Agreement. This Contract may be used by (a) all departments, offices, institutions, and other agencies of the State of Vermont and counties (each a "State Purchaser") according to the process for ordering and other restrictions applicable to State Purchasers set forth herein; and (b) political subdivisions of the State of Vermont and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education as authorized under 29 V.S.A. § 902 (each an "Additional Purchaser"). State Purchasers and Additional Purchasers are also referred to herein as a "Purchasing Entity" or "Purchasing Entities." Issues concerning eligibility to purchase under this Agreement are solely within the authority of the State of Vermont Chief Procurement Officer. The State of Vermont and its officers and employees shall have no responsibility or liability for Additional Purchasers. Each Additional Purchaser is to make its own determination whether this Contract is consistent with its procurement policies and regulations.

5. Prior Approvals. This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. Amendment. No changes, modifications, or amendments to the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. Termination for Convenience. This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. Primary Contacts. The Parties will keep and maintain current at all times a primary point of contact for this Agreement, which are presently as follows:

a. For the Contractor:
 Name: Scott Newman
 Phone: 802-777-1572
 Email: scottnewman@106associates.com

b. For the State:
 Name: James Meyers
 Phone: 802-249-7275
 Email: james.meyers@vermont.gov

9. Attachments. This contract consists of 22 pages including the following attachments which are incorporated herein:
 Attachment A - Statement of Work
 Attachment B - Payment Provisions
 Attachment C - "Standard State Provisions for Contracts and Grants" a preprinted form (12/15/17)

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Attachment D - General Conditions for Architectural /Engineer Professional Service Agreement
Attachment D1 - Sample
Attachment E - BGS Map

10. Order of Precedence. Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment C - (Standard Contract Provisions for Contracts and Grants)
- (3) Attachment D - General Conditions for Architectural /Engineer Professional Service Agreement
- (4) Attachment A - Statement of Work
- (5) Attachment B - Payment Provisions
- (6) Attachment D1 - Sample
- (7) Attachment E - BGS Map

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the STATE of VERMONT

By the CONTRACTOR

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: Jennifer M.V. Fitch

Name: _____

Title: Commissioner - Buildings and
General Services

Title: _____

Email: _____

Email: _____

ATTACHMENT A – STATEMENT OF WORK

The Contractor shall provide all labor, materials and equipment necessary to satisfactorily complete Architectural Historian Services as identified below.

Contractor shall provide:

- 1.1 This Contract may be utilized for Architectural Historian Services. Projects are not to exceed \$150,000.00, including all costs associated with the individual project, such as labor, material, equipment, etc.
- 1.2 All Contractor work performed under this contract shall be planned and scheduled by Project Managers from the Agency/Department coordinating the work. The Project Manager will work closely with both Contractor and the Agency/Department requiring the work and will approve all invoices for work completed under this Contract.
 - 1.2.1 If the Contractor is selected to perform work on a project, the Agency/Department will issue a Purchase Order (PO) with a project Statement of Work and the Project Manager shall provide a PO number to the Contractor to reference on their invoice for services completed under that specific work assignment.
 - 1.2.2 The resultant Purchase Order will be administered by the Agency/Department coordinating the work.
- 1.3 Contractor's typical working hours under this Contract will range between 6:00 AM and 5:00 PM, Monday through Friday, but occasions may arise which would require work to be performed before or after these hours, on weekends, or Federal government observed holidays. The typical working hours may vary by the type of facility or the operational needs of the Agency/Department where work is being performed and, if typical work hours vary from the above, such hours will be established at the beginning of each project.
- 1.4 Contractor shall notify the Project Manager of any maintenance related issues that are discovered while performing work.
- 1.5 All unclaimed work articles found in or about the work area by the Contractor shall be turned in immediately to the Project Manager, with the location where the article was found.
- 1.6 Contractor acknowledges that security procedures in some State buildings require a background clearance be performed on any contractor working inside the building, prior to beginning work. Projects at Correctional Facilities, Courthouses, and Public Safety buildings may all require clearances.
- 1.7 Contractor shall secure and pay for any permits and inspections required by the authorities having jurisdiction, or for warranty purposes. Contractor shall ensure that any inspections are made by the appropriate State or local authority having jurisdiction, or manufacturer from which the warranty will be issued.
- 1.8 Subcontractors, if required, shall be approved in writing by the Project Manager prior to performing work as part of the contract.
- 1.9 SITE SUPERVISION:
 - 1.9.1 Contractor shall provide adequate supervision of his employees to ensure complete and satisfactory performance of all work in accordance with the terms of the contract. Contractor shall have a responsible supervisor on the job at all times when the work of the contract is being carried out.
 - 1.9.2 Contractor's site supervisor shall be responsible for communication with the State's representatives and shall meet with the Project Manager at the site on a weekly basis to discuss project status, including any problems, ideas, or concerns related to the project work.

- 1.9.3 Contractor and its employees shall be subject to all applicable State and Federal statutes and regulations for the conduct of personnel.
- 1.9.4 The Contractor shall provide adequate supervision of his/her subcontractors and their employees at all times.

1.10 WORKMANSHIP AND MATERIALS:

- 1.10.1 Contractor shall furnish all supervision, labor, transportation, materials, tools and equipment necessary to satisfactorily complete the service in a manner consistent with the Project Manager's plan and schedule. Contractor's equipment shall be of the size and type appropriate for completing the various types of work described in the contract or any associating Purchase Order. Contractor shall ensure that any equipment considered by the Project Manager to be improper or inadequate for this purpose is removed from the site and replaced with satisfactory equipment.
 - 1.10.2 All work performed under this contract shall be completed in accordance with local, state, and national codes and standards, and other recognized industry standards associated with the work.
 - 1.10.3 The Contractor guarantees that all materials shall be of the best quality, that all work shall be done in a professional manner, and that all aspects of the project will be delivered in good working order, complete and perfect in every respect, and that all systems and materials necessary to make the project completely operational as contemplated by the above description of the project, even if those systems and materials are not specifically described in this Contract, shall be included in the contract price.
 - 1.10.4 Contractor shall ensure that all supplies, equipment and machines shall be kept free of traffic lanes or other areas that may be hazardous. Contractor shall further ensure that all dirt and debris resulting from the work under this contract shall be disposed of at the end of each day or at the completion of work in each building.
 - 1.10.5 Contractor shall, at no additional cost to the State, repair furnishings, equipment, facilities or other property of the State damaged by Contractor, its officers, employees, agents, contractors, subcontractors and invitees. Contractor acknowledges that the determination of the need for, and extent of, any repair work shall be made at the sole discretion of the Project Manager.
- 1.11 In the event of Contractor default, the State may procure the services, materials and/or supplies from other sources and hold Contractor responsible for any excess cost occasioned thereby, provided that, if public necessity requires the use of services, materials and/or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a proper reduction in price.
- 1.12 **FUNDING SOURCE:** This project is being funded, in whole or in part, through the state's capital construction act(s) and shall require compliance with the Vermont Prevailing Wage and Fringe Benefit Rate requirements (reference Instructions to Bidders, Prevailing Wage Rate Requirements). A complete list of occupations and associated wage rates are available on the internet at:
<http://www.vtmi.info/lmipub.htm>.
- 1.13 Vermont Prevailing Wage Rate Requirements. Vermont law requires State construction projects exceeding \$100,000 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>
- 1.14 EXPERTISE OR SPECIALTIES PROVIDED BY YOUR COMPANY:
- ✓ Log; Post & Beam
 - ✓ 19th Century

- ✓ Early 20th Century
- ✓ Mid-Century Modern – Modern
- ✓ Civilian Conservation Corps (Adirondack Rustic)
- ✓ Landscape Design
- ✓ Roads & Transportation Related Structures
- ✓ Masonry
- ✓ Research & Documentation – State & National Registers Nomination Preparation
- ✓ Specific Architectural Period: 1775-1980
- ✓ Architectural Survey
- ✓ Other: correctional facilities, courthouses, Section 106, 22VSA, Act 250

1.15 BUILDINGS & GENERAL SERVICES (BGS) MAINTENANCE DISTRICTS/FOREST, PARKS & RECREATION (FPR) REGIONS COMPANY IS WILLING TO SERVICE:

- ✓ BGS District 1– Montpelier/Barre/Berlin; FPR Region 4 - Northeast Region
- ✓ BGS District 2 - Waterbury/Hyde Park/Middlesex; FPR Region 4 - Northeast Region
- ✓ BGS District 3 Northwest; FPR Region 3 - Northwest Region (excludes Charlotte & Ferrisburgh)
- ✓ BGS District 4 –Northeast; FPR Region 4 - Northeast Region
- ✓ BGS District 5 – Southwest; FPR Region 2 - Southwest Region (includes Charlotte & Ferrisburgh; excludes Killington)
- ✓ BGS District 6 – Southeast; FPR Region 1 - Southeast Region (includes Killington)

ATTACHMENT B – PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - 1.1. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - 1.2. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. In consideration of the services performed by Contractor, the State shall pay Contractor in accordance with the following schedule of rates. These rates are inclusive of all fees and expenses including mileage and travel time:

Job Title	UOM	Hourly Rate	Hourly Rate for off- hours, weekends and holidays
Architectural Historian Consulting Services	HR	\$80.00	\$80.00

4. Contractor Material Mark-up: The State will not consider any contractor’s material mark-up exceeding 10% over the Contractor’s actual cost.
5. The State will not consider any mark-up exceeding 5% by the contractor, on any work performed by subcontractors.
6. The State will not consider any subcontractor’s material mark-up exceeding 10% over the subcontractor’s actual cost.
7. 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.
 - 7.1. Services may be issued on a time and materials basis or at a fixed price. The following information is required on all invoices:
 - 7.1.1. All invoices must include the Contract # and numbered invoice for this contract;
 - 7.1.2. Time frame indicated of when work was performed;
 - 7.1.3. Copy of quote originally submitted;
 - 7.1.4. The agreed to markup for profit and overhead unless a previously agreed to billing schedule was approved in the contract;
 - 7.1.5. Certification that the contractor has no ownership (majority or minority) in any subcontractor they claim for profit and overhead;

- 7.1.6. Provide supporting documentation of material costs, in accordance with the percentage specified in the contract. This supporting documentation is required for verification.
- 7.2. For projects billed on a Time & Materials basis, the following additional information must be included:
 - 7.2.1. 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).
 - 7.2.2. Copies of original receipts for all materials purchased or costs incurred as a result of the scope of work.
- 8. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall not be submitted more frequently than monthly. Invoices shall be submitted to the State Agency/Department requesting services.
- 9. This contract can be extended for one (1) additional 24-month period with mutual agreement between both parties per the Consumer Price Index for All Urban Consumers (CPI-U) for the previous twenty-four (24) months. Should the percentage change be negative, the State reserves the right to adjust the yearly contract amount accordingly.

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

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

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

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

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

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

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

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

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

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

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

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

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

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

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

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

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

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

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or

acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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

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

16. Taxes Due to the State:

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

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

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

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

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

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

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

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

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

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

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

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

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

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

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

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.

C. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

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

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

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

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

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required. For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.
- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

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

(End of Standard Provisions)

Attachment D

Standard State Provisions

Architect/Engineer Professional Service Agreement

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

6. Independence, Liability, Indemnity:

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

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

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

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

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

ATTACHMENT D1: CONSTRUCTION

STATE OF VERMONT
STATEMENT OF WORK (SOW) Request for Proposal (RFP)

PROJECT NAME (If using SEP funds, project title must include prefix "SEP14:")

TOWN, VERMONT

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

Construction Service Category: **XXXXXXXXXX** (retainer contract category name here)

Request for Proposal: **MONTH DAY, YEAR** (issue date)

1. ADMINISTRATIVE INFORMATION

1.1. AGENCY/DEPT RESPONSIBLE FOR SOW-RFP AND SOW AGREEMENT

1.1.1. **NAME OF STATE PROJECT MANAGER, AGENCY OR DEPT. NAME**

1.2. This SOW RFP is being issued in accordance with the Master Agreement between the Contractor and the State of Vermont, Department of Buildings and General Services, Office of Purchasing and Contracting. After an evaluation of Contractor's response to this SOW RFP, the Contracting Agency may elect to enter into a specific Purchase Order (PO) which will outline all SOW requirements.

2. SOW PROPOSAL SUBMISSIONS

2.1. All SOW Proposals are due no later than: **MONTH DAY, YEAR at TIME**

2.2. Proposals must be submitted by email, mail or in person to: **EMAIL ADDRESS OF STATE PROJECT MANAGER.**

3. PRE-BID MEETING: (Choose one)

3.1. **The contracting Agency/Department will hold a pre-bid meeting at LOCATION on MONTH DAY, YEAR at TIME. Questions presented at the pre-bid will be answered in writing by addendum.**
OR
There will not be a pre-bid meeting for this project.

4. QUESTION PERIOD: (Optional)

4.1. All questions pertaining to this RFP must be submitted to the project manager in writing to **EMAIL ADDRESS OF STATE PROJECT MANAGER** by **MONTH DAY, YEAR** at **TIME**. Questions will be answered by addendum.

5. STATEMENT OF RIGHTS

5.1. The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. The Contractor may be asked to give a verbal presentation of its proposal after submission. Failure of Contractor to respond to a request for additional information or clarification could result in rejection of the Contractor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

6. METHOD OF AWARD AND PROCEDURE FOR AWARDING A SOW AGREEMENT

6.1. Contractor selection, or the determination to terminate the SOW-RFP without award, shall be done in the best interest of the State.

6.2. EVALUATION CRITERIA:

6.2.1. The responses will be evaluated based on the following: (Edit evaluation criteria below as appropriate for your project)

6.2.1.1. Cost

6.2.1.2. Prior Experience with this type of work (Optional, if specialized; include same requirement in SOW)

6.2.1.3. Ability to meet completion dates in proposed project schedule (Must include schedule/completion dates in SOW)

7. SCOPE OF WORK/PROJECT REQUIREMENTS:

7.1. Describe project scope of work, special requirements, schedule and completion dates, etc., in detail. (Under no circumstance should a SOW be developed, or a SOW RFP be released, where the deliverables are not quantified or the criteria for acceptance are not defined. Be clear and concise. The deliverables identified here should be directly tied to payment provisions)

7.2. For projects using Special Experimental Projects (SEP) funds, the following shall apply and be identified in the resulting SOW-PO and/or SOW-Agreement. (Delete this section in its entirety if this is not an SEP-funded project)

7.2.1. **FUNDING SOURCE:** This project is being funded using federal monies and shall require compliance with the Davis-Bacon Act. Wages shall be paid using rates no less than those established under the Davis-Bacon prevailing wage rates. Complete information related to Davis-Bacon and Related Acts is available at:
<http://www.dol.gov/whd/contracts/dbra.htm> .

7.2.2. **Disadvantaged Business Enterprises (DBEs):** Certified DBE's are encouraged to submit proposals for the work being bid. If Certified DBE's are unable to bid the project

directly, and only want to bid on portions of the work, then you are encouraged to seek out a current plan holder. Plan holder lists are posted weekly at: <http://bgs.vermont.gov/purchasing>, and then click on Construction Bid Tabulations/Plan Holder Lists on the right hand column of the screen. For more information on the DBE Certification application process visit: <http://vtrans.vermont.gov/civil-rights/doing-business/dbe-center> or contact Sonya Boisvert, 802-279-1330, email: sonya.boisvert@vermont.gov.

7.2.3. Contractors and Subcontractors are required to follow the requirements of 46 CFR 381.7 (a)-(b). For guidance on requirements of Part 381 – Cargo Preference – U.S. Flag Vessels please go to the following web link: <https://www.fhwa.dot.gov/construction/cqit/cargo.cfm>

7.2.4. Additional requirements associated with this project shall require Contractor compliance with the following:

7.2.4.1. FHWA 1273: <http://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/davis-bacon>

7.2.4.2. USDOL Vermont Highway Wage Decisions: : <http://vtrans.vermont.gov/civil-rights/doing-business/contractors-center/davis-bacon>

7.2.4.3. USDOL Building Wage Decisions: <http://www.wdol.gov/dba.aspx>, click on: State, County then Construction Type (would be Building), then hit search.

7.2.4.4. VTrans CR Contractor and Labor Compliance website: <http://vtrans.vermont.gov/civil-rights>.

7.2.5. **Jobsite Posters:** VTrans will be providing the Federal poster package to BGS for use by the Contractor on-site. When a job office is not established due to the nature of the work and/or the length of the contract, the contractor and subcontractors must display all notices or posters at their home offices where hiring is conducted, and each employee must be provided copies of all the notices or posters and sign a statement acknowledging they received and understood the content of all the notices or posters. The signed statement must be included with all invoices.

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

7.3. Electronic Submittals:

7.3.1. 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.

7.3.2. Submittal Exchange® (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.

7.3.3. 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.

7.3.4. 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.

7.3.5. The Project Manager will coordinate the initial training between the Contractor and Submittal Exchange®.

7.4. BONDING (choose one)

7.4.1. Bonding is not required for this project.

OR

7.4.2. Full bonding is required for this project.

OR

7.4.3. Modified binding is required for this project.

7.5. RETAINAGE (choose one)

7.5.1. 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.

OR

7.5.2. Retainage will not be withheld on this project.

8. CHANGE ORDERS

8.1. Change orders are not anticipated, however, if one becomes necessary, such work must be authorized by the State in writing before such work can proceed and may require an amendment to the SOW Agreement.

9. SUBCONTRACTORS (if being used)

9.1. Identify all proposed subcontractors and their full roles that may be involved completing the Scope of Work. No work shall be subcontracted without knowledge of and approval by the State.

10. REQUIRED PRICE PROPOSAL RESPONSE

10.1. All pricing must be fixed cost, inclusive of all expenses and fees if this Statement of Work proposal is for a Fixed Price agreement. (Remove if this is a Time and Materials agreement)

OR

For Time and Materials, the pricing proposal must include estimated effort hours, hourly rate

for proposed personnel, projected timeline, NTE amount, and completion date. (Remove if this is a Fixed Price agreement)

11. INVOICING AND PAYMENT

11.1. All work performed by the Contractor must be approved in advance by the State. Once work has been completed, delivered and accepted by the State, invoicing can occur. The State's payment terms are net 30 days.

12. PLAN SECURITY CERTIFICATION

12.1. 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.

13. MINORITY AND WOMEN BUSINESS ENTERPRISES (M/WBE) Delete this section in its entirety if the total project cost is less than \$50,000.

13.1. 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. Upon receipt of letter of intent to award contract, the successful bidder shall submit an M/WBE Reporting Form along with certificates of insurance and other pre-contract information. 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 contract will not be executed 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.

14. VERMONT PREVAILING WAGE RATE REQUIREMENTS Delete this section in its entirety if the total project cost is less than \$100,000.

14.1. 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>.

15. WORKER CLASSIFICATION Delete this section in its entirety if the total project cost is less than \$250,000.

15.1. 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.

16. WASTE REDUCTION PLANNING

16.1. 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 contract execution. 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.

STATE OF VERMONT
PRICE PROPOSAL FOR SOW-RFP FOR
PROJECT NAME (If using SEP funds, project title must include prefix "SEP14:")
TOWN, VERMONT

PRICE PROPOSAL: \$ _____

COMPLETION DATE: _____

ACKNOWLEDGEMENT OF ADDENDUMS (IF APPLICABLE)

1. _____
2. _____
3. _____

COMPANY NAME: _____

NAME: _____

SIGNATURE: _____

DATE: _____

SAMPLE

COMMENCEMENT OF WORK UNDER A SOW AGREEMENT

Commencement of work as a result of the SOW-RFP process shall be initiated only upon issuance of a fully executed Purchase Order.

ATTACHMENT E

