

# State of Vermont

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

# CONTRACT



**Supplier 0000167378**  
**Earth Waste Systems**  
**49 Wales Street**  
**Rutland VT 05702**  
**USA**

<b>Contract ID</b> 000000000000000000000000032800	<b>Page</b> 1 of 3
<b>Contract Dates</b> 12/01/2016 to 12/01/2020	<b>Origin</b> CPS
<b>Description:</b> CPS-SCRAP METAL REMOVAL SVS	<b>Contract Maximum</b> \$0.00
<b>Buyer Name</b> William A Vivian Jr.	<b>Buyer Phone</b> 828-4681
<b>Contract Status</b> Approved	

**Phone #:**

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
1		SCRAP METAL REMOVAL SERVICES	EA	0.01000	0.00	0.00

### STATE OF VERMONT STANDARD CONTRACT FOR SERVICES

- Parties.** This is a contract for services between the State of Vermont, Department of Buildings and General Services (hereinafter called "State"), and New England Quality Service, Inc. d/b/a Earth Waste Systems, with a principal place of business in Rutland, Vermont, (hereinafter called "Contractor"). Contractor's form of business organization is Scrap Metal Removal Services. It is 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.
- Subject Matter.** The subject matter of this contract is services generally on the subject of Scrap Metal Removal Services. Detailed services to be provided by Contractor are described in Attachment A.
- Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$0.00
- Contract Term.** The period of contractor's performance shall begin on December 1, 2016 and end on December 1, 2018 with option to renew for two (2) one year periods.
- 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.
- Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
- Cancellation.** This contract may be canceled by either party by giving written notice at least thirty (30) days in advance.
- Vermont State Colleges.** This contract is also available for use by the University of Vermont and the Vermont State Colleges Inc., a separate corporation, having under its jurisdiction Castleton State College, Johnson State College, Lyndon State College, Community College of Vermont, and the Vermont Technical College.
- Towns and schools of the State of Vermont.** This contract is also available for use by political subdivisions and independent colleges of the state may participate in state contracts at the same prices, terms and conditions. Items furnished to political subdivisions and independent colleges will be billed directly to and paid for by the political subdivisions or independent colleges and neither the state nor its Commissioner of Buildings and General Services personally or officially assumes any responsibility for these payments. Agencies & Departments are requested to advise the purchasing agent at once of the failure on the part of the contractor to fulfill any of the terms or conditions of this contract.
- Attachments.** This contract consists of 12 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 (revision date 07/01/2016)
- 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 A  
(4) Attachment B

# State of Vermont

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

# CONTRACT



**Supplier 0000167378**  
**Earth Waste Systems**  
**49 Wales Street**  
**Rutland VT 05702**  
**USA**

<b>Contract ID</b> 0000000000000000000032800	<b>Page</b> 2 of 3
<b>Contract Dates</b> 12/01/2016 to 12/01/2020	<b>Origin</b> CPS
<b>Description:</b> CPS-SCRAP METAL REMOVAL SVS	<b>Contract Maximum</b> \$0.00
<b>Buyer Name</b> William A Vivian Jr.	<b>Buyer Phone</b> 828-4681
<b>Contract Status</b> Approved	

**Phone #:**

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
--------	---------	-----------	-----	------------	---------	---------

NOVEMBER 20, 2018

AMENDMENT #01 - TO EXTEND CONTRACT FOR A ONE YEAR PERIOD AT THE SAME PRICES, TERMS AND CONDITIONS.

ATTACHMENT C: ATTACHMENT C: STANDARD STATE CONTRACT PROVISIONS FOR CONTRACTS AND GRANTS DATED DECEMBER 15, 2017 SEE ATTACHED, WHICH SUPERSEDES ALL PRIOR VERSIONS OF ATTACHMENT C.

CONTRACTOR CERTIFIES UNDER THE PAINS AND PENALTIES OF PERJURY THAT, AS OF THE DATE THIS CONTRACT AMENDMENT IS SIGNED, 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

CHILD SUPPORT (APPLICABLE TO NATURAL PERSONS ONLY; NOT APPLICABLE TO CORPORATIONS, PARTNERSHIPS OR LLCs):

CONTRACTOR 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 AMENDMENT.

CERTIFICATION REGARDING SUSPENSION OR DEBARMENT. CONTRACTOR CERTIFIES UNDER THE PAINS AND PENALTIES OF

PERJURY THAT, AS OF THIS DATE THIS CONTRACT AMENDMENT IS SIGNED, NEITHER PARTY NO 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 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](http://bgs.vermont.gov/purchasing/debarment) .

STATE OF VERMONT  
CONTRACT AMENDMENT #2

It is hereby agreed by and between the State of Vermont, Department of Purchasing and Contracting (the "State") and Earth Waste Systems, with a principal place of business in Rutland VT (the "Contractor") that the contract between them originally dated as of December 01, 2016, Contract #32800, as amended to date, (the "Contract") is hereby amended as follows:

II. Contract Term. The Contract end date, wherever such reference appears in the Contract, shall be changed from December 01, 2019 to December 01, 2020.

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment 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.

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor 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 amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment 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 contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

This document consists of 3 pages. Except as modified by this Amendment No. 2, all provisions of the Contract remain in full force and effect.

**State of Vermont**

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

**CONTRACT**



**Supplier 0000167378**  
**Earth Waste Systems**  
**49 Wales Street**  
**Rutland VT 05702**  
**USA**

<b>Contract ID</b> 0000000000000000000032800		<b>Page</b> 3 of 3
<b>Contract Dates</b> 12/01/2016 to 12/01/2020		<b>Origin</b> CPS
<b>Description:</b> CPS-SCRAP METAL REMOVAL SVS		<b>Contract Maximum</b> \$0.00
<b>Buyer Name</b> William A Vivian Jr.	<b>Buyer Phone</b> 828-4681	<b>Contract Status</b> Approved

**Phone #:**

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
--------	---------	-----------	-----	------------	---------	---------

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

By the STATE of VERMONT

By the CONTRACTOR

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Christopher Cole

Name: \_\_\_\_\_

Commissioner

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Email: Buildings & General Services

Email: \_\_\_\_\_

# State of Vermont

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

# CONTRACT



**Vendor ID 0000167378**  
**Earth Waste Systems**  
**49 Wales Street**  
**Rutland VT 05702**  
**USA**

<b>Contract ID</b> 000000000000000000000000032800	<b>Page</b> 1 of 2	
<b>Contract Dates</b> 12/01/2016 to 12/01/2019	<b>Origin</b> CPS	
<b>Description:</b> CPS-SCRAP METAL REMOVAL SVS	<b>Contract Maximum</b> \$0.00	
<b>Buyer Name</b> Steven D Smith	<b>Buyer Phone</b> 828-4681	<b>Contract Status</b> Approved

**Phone #:**

Line #	ItemID	ItemDesc	UOM	Unit Price	Max Qty	Max Amt
1		SCRAP METAL REMOVAL SERVICES	EA	0.01000	0.00	0.00

## CONTRACT TERMS AND ADDITIONAL INFORMATION

### STATE OF VERMONT STANDARD CONTRACT FOR SERVICES

- Parties.** This is a contract for services between the State of Vermont, Department of Buildings and General Services (hereinafter called "State"), and NewEngland Quality Service, Inc. d/b/a Earth Waste Systems, with a principal place of business in Rutland, Vermont, (hereinafter called "Contractor"). Contractor's form of business organization is Scrap Metal Removal Services. It is 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.
- Subject Matter.** The subject matter of this contract is services generally on the subject of Scrap Metal Removal Services. Detailed services to be provided by Contractor are described in Attachment A.
- Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$0.00
- Contract Term.** The period of contractor's performance shall begin on December 1, 2016 and end on December 1, 2018 with option to renew for two (2) one year periods.
- 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.
- Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
- Cancellation.** This contract may be canceled by either party by giving written notice at least thirty (30) days in advance.
- Vermont State Colleges.** This contract is also available for use by the University of Vermont and the Vermont State Colleges Inc., a separate corporation, having under its jurisdiction Castleton State College, Johnson State College, Lyndon State College, Community College of Vermont, and the Vermont Technical College.
- Towns and schools of the State of Vermont.** This contract is also available for use by political subdivisions and independent colleges of the state may participate in state contracts at the same prices, terms and conditions. Items furnished to political subdivisions and independent colleges will be billed directly to and paid for by the political subdivisions or independent colleges and neither the state nor its Commissioner of Buildings and General Services personally or officially assumes any responsibility for these payments. Agencies & Departments are requested to advise the purchasing agent at once of the failure on the part of the contractor to fulfill any of the terms or conditions of this contract.
- Attachments.** This contract consists of 12 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 (revision date 07/01/2016)
- 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 A  
(4) Attachment B

**State of Vermont**

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

**CONTRACT**



**Vendor ID 0000167378**  
**Earth Waste Systems**  
**49 Wales Street**  
**Rutland VT 05702**  
**USA**

<b>Contract ID</b> 00000000000000000000032800	<b>Page</b> 2 of 2
<b>Contract Dates</b> 12/01/2016 to 12/01/2019	<b>Origin</b> CPS
<b>Description:</b> CPS-SCRAP METAL REMOVAL SVS	<b>Contract Maximum</b> \$0.00
<b>Buyer Name</b> Steven D Smith	<b>Buyer Phone</b> 828-4681
<b>Contract Status</b> Approved	

**Phone #:**

Line #	ItemID	ItemDesc	UOM	Unit Price	Max Qty	Max Ant
--------	--------	----------	-----	------------	---------	---------

NOVEMBER 20, 2018

AMENDMENT #01 - TO EXTEND CONTRACT FOR A ONE YEAR PERIOD AT THE SAME PRICES, TERMS AND CONDITIONS.

ATTACHMENT C: ATTACHMENT C: STANDARD STATE CONTRACT PROVISIONS FOR CONTRACTS AND GRANTS DATED DECEMBER 15, 2017 SEE ATTACHED, WHICH SUPERSEDES ALL PRIOR VERSIONS OF ATTACHMENT C.

CONTRACTOR CERTIFIES UNDER THE PAINS AND PENALTIES OF PERJURY THAT , AS OF THE DATE THIS CONTRACT AMENDMENT IS SIGNED, 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

CHILD SUPPORT (APPLICABLE TO NATURAL PERSONS ONLY; NOT APPLICABLE TO CORPORATIONS, PARTNERSHIPS OR LLCs): CONTRACTOR 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 AMENDMENT.

CERTIFICATION REGARDING SUSPENSION OR DEBARMENT: CONTRACTOR CERTIFIES UNDER THE PAINS AND PENALTIES OF PERJURY THAT , AS OF THIS DATE THIS CONTRACT AMENDMENT IS SIGNED, NEITHER PARTY NO 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 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](http://BGS.VERMONT.GOV/PURCHASING/DEBARMENT) .

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

By the STATE of VERMONT

By the CONTRACTOR

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

## ATTACHMENT A

### STATEMENT OF WORK: SCRAP METAL REMOVAL SERVICES

Contractor shall provide all supervision, labor, materials and equipment and collection units necessary for the pick-up, removal, disposal and sale of state owned scrap metal at various locations around the State of Vermont.

Services locations currently authorized under this agreement include the following. For all other service locations under this agreement, contractor must receive proper authorization from customer in writing prior to providing equipment, supplies and/or services under this agreement.

- BGS Surplus Property Division – 438 US Route 2, Ste 2, Waterbury, VT 05671
  - BGS Maintenance Division - 135 State Street, Montpelier, VT 05633
  - BGS Maintenance Division – 103 South Main Street, Waterbury, VT 05676
  - VT Agency of Transportation, Central Garage, 1756 US Rte 302, Berlin, VT 05602
1. Scrap metal will be mixed and unsorted when collected.
  2. If prohibited items are not removed, the load will be rejected and the appropriate regulatory agency may be notified. Prohibited items shall be:
    - Batteries or pieces of batteries (including battery terminal connectors).
    - Gas tanks, propane bottles, air bag canisters, or gas cylinders.
    - Tires.
    - Any cans or other containers containing oil, brake fluid, antifreeze, lead additives or other fluids.
    - Garbage, rags, paper and other debris.
    - Fluorescent light ballasts, capacitors, wet or dry transformers, or any other materials which may contain PCB's.
    - Refrigerants, including but not limited to chlorofluorocarbons (cfc) and hydrochlorofluorocarbons (hcfcs), (refrigerants must be properly recovered, not vented).
    - Any radioactive material or radioactive containment materials.
    - 55 gallon drums must have one end removed and no residue.
    - Cable.
    - Mercury.
  3. Contractor will upon request provide at a minimum, one 20, 30 or 40 cubic yard roll-off bin for the collection of scrap metal, at no charge to the customer.
  4. Contractor will upon request provide a separate bin for aluminum scrap, at no charge to the customer.
  5. Contractor will pick-up bin within one week of written notification by the customer.
  6. Contractor will replace full bin with empty bin upon pick-up.
  7. Contractor shall dispose of scrap metal in accordance with all Federal and State Laws.

8. Contractor shall possess a valid Solid Waste Transporter Permit in accordance with 10 V.S.A. §6607.
9. Reporting requirements: contractors will be required to submit quarterly product sales report to the purchasing agent pursuant to the schedule below. Each report must contain the following information: contract number; using department's address, contact name, and telephone number; product ordered; quantity ordered; quantity shipped; and price charged, with totals for each product for each reporting period. The state reserves the right to request additional information or to modify the reporting periods. Reporting periods: Quarterly reports must be submitted in accordance with the following schedule:
  - Reporting period: January 1 to March 31 - Report due April 15
  - Reporting period: April 1, to June 30 - Report due July 15
  - Reporting period: July 1 to September 30 - Report due October 15
  - Reporting period: October 1 to December 31 - Report due January 15
10. Default: In case of default of the contractor, the state may procure the materials or supplies from other sources and hold the contractor responsible for any excess cost occasioned thereby, provided, that if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefore shall be made at a proper reduction in price.

11. Vendor Contact Information:

Sharon Herbert  
Operations Manager  
Tel: 802-775-7722  
Fax: 802-786-9070

Email: [sherbert@earthwastesystems.com](mailto:sherbert@earthwastesystems.com)

If you have any questions regarding this document, please contact:

State of Vermont  
Office of Purchasing & Contracting  
Steve Smith  
Tel. 802-828-4681  
Email: [Steven.smith@Vermont.gov](mailto:Steven.smith@Vermont.gov)

## ATTACHMENT B

### PAYMENT PROVISIONS: SCRAP METAL REMOVAL SERVICES

1. Contractor will dispose of scrap metal and pay the customer a percentage of scrap metal revenue generated as specified in the contract, based on AMM Index Posting Pricing for the Boston "export yard buying price" for mixed and unsorted scrap iron and steel, "No. 2, heavy melt, low side price and the Boston "consumer buying prices" for Presorted Aluminum shall be, "Aluminum mixed clips", low side price on the date of pickup. No other rebate structure will be allowed.
2. Scrap Metal Removal Services: Contractor will rebate customer 70.2% of AMM Index Posting for the Boston Export Yard Buying Pricing for mixed and unsorted scrap iron and steel, #2, heavy melt price for scrap metal removed from site. There are no charges to the State of Vermont for hauling or containers.
3. Aluminum Scrap Metal Removal Services: Contractor will rebate customer 85% of AMM index posting for the Boston Consumer Buying Prices for aluminum mixed clips, low side price for scrap aluminum removed from site. There are no charges to the State of Vermont for hauling or containers.
4. Rebate Payment Package Shall Include:
  - Rebate package shall be done on the basis of each pick up completed.
  - Rebate check (all payments shall be made by company or bank check, no cash).
  - Weigh slips for each commodity weighed (statement of hauling).
  - Statement on company letterhead clearly showing the quantity in gross tons or lbs, #2 bundle or aluminum.
  - Statement will also show any miscellaneous items picked up (i.e. Freon appliance) and the fee charged or the Rebate given on behalf of the item.
  - Date, state agency and physical location where the pick-up was located.
  - Contract price per GT or LB (depending on commodity) for rebate.
  - A copy of the AMM Index Postings for the date of pick up and all relative commodities to support the transaction value.
  - Gross, tare and net weights.
  - Adjustment/reason.
  - Description of itemized item picked up (i.e. cars).
5. Contractor will include a Statement of Hauling with the payment to the customer.
6. Contractor will include a copy of the AMM Index Posting for the date of pickup to support the transaction value.
7. Payment is to be made within thirty days of the date of scrap metal removal from customer's site.
8. The State shall not be responsible for any unauthorized expenses or services incurred and/or performed by the Contractor. All invoices must have the contract number on the invoice.

9. The quoted schedule of rates will remain in effect for the initial contract period of two years. There will be no adjustments for fuel or other costs which are subject to change.

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED JULY 1, 2016**

**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 the 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. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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 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 or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**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 the 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 the Contract, 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. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, 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 the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, 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 the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR 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.

**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 the 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 the 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 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 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**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. Certification Regarding Use of State Funds:** In the case that 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.

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

**25. 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.

**26. 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.

**27. 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.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- 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. No Implied Waiver of Remedies:** A 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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 continental United States, except with the express written permission of the State.

(End of Standard Provisions)



**State of Vermont**

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

**CONTRACT**



Vendor ID 0000167378  
Earth Waste Systems  
49 Wales Street  
Rutland VT 05702  
USA

Contract ID 000000000000000000000000000032809		Page 2 of 2
Contract Dates 12/01/2016 to 12/01/2018		Origin CPS
Description: CPS-SCRAP METAL REMOVAL SVS		Contract Maximum \$0.00
Buyer Name Smith, Steven D	Buyer Phone 828-4681	Contract Status Approved

Phone #:

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
--------	---------	-----------	-----	------------	---------	---------

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the STATE of VERMONT

By the CONTRACTOR

Date: \_\_\_\_\_ e-Signed by Chris Cole

Date: 3/8/17

Signature: \_\_\_\_\_ on 2017-03-13 22:46:11 GMT

Signature: [Handwritten Signature]

Name: Christopher Cole

Name: Simon Herbut

Title: Commissioner

Title: Operations Manager

Dept. of Buildings & General Services

Email: Sherbut@earthwaste

Email: \_\_\_\_\_

Systems.com

## ATTACHMENT A

### STATEMENT OF WORK: SCRAP METAL REMOVAL SERVICES

Contractor shall provide all supervision, labor, materials and equipment and collection units necessary for the pick-up, removal, disposal and sale of state owned scrap metal at various locations around the State of Vermont.

Services locations currently authorized under this agreement include the following. For all other service locations under this agreement, contractor must receive proper authorization from customer in writing prior to providing equipment, supplies and/or services under this agreement.

- BGS Surplus Property Division – 438 US Route 2, Ste 2, Waterbury, VT 05671
  - BGS Maintenance Division - 135 State Street, Montpelier, VT 05633
  - BGS Maintenance Division – 103 South Main Street, Waterbury, VT 05676
  - VT Agency of Transportation, Central Garage, 1756 US Rte 302, Berlin, VT 05602
1. Scrap metal will be mixed and unsorted when collected.
  2. If prohibited items are not removed, the load will be rejected and the appropriate regulatory agency may be notified. Prohibited items shall be:
    - Batteries or pieces of batteries (including battery terminal connectors).
    - Gas tanks, propane bottles, air bag canisters, or gas cylinders.
    - Tires.
    - Any cans or other containers containing oil, brake fluid, antifreeze, lead additives or other fluids.
    - Garbage, rags, paper and other debris.
    - Fluorescent light ballasts, capacitors, wet or dry transformers, or any other materials which may contain PCB's.
    - Refrigerants, including but not limited to chlorofluorocarbons (cfc) and hydrochlorofluorocarbons (hcfcs), (refrigerants must be properly recovered, not vented).
    - Any radioactive material or radioactive containment materials.
    - 55 gallon drums must have one end removed and no residue.
    - Cable.
    - Mercury.
  3. Contractor will upon request provide at a minimum, one 20, 30 or 40 cubic yard roll-off bin for the collection of scrap metal, at no charge to the customer.
  4. Contractor will upon request provide a separate bin for aluminum scrap, at no charge to the customer.
  5. Contractor will pick-up bin within one week of written notification by the customer.
  6. Contractor will replace full bin with empty bin upon pick-up.
  7. Contractor shall dispose of scrap metal in accordance with all Federal and State Laws.

8. Contractor shall possess a valid Solid Waste Transporter Permit in accordance with 10 V.S.A. §6607.
9. Reporting requirements: contractors will be required to submit quarterly product sales report to the purchasing agent pursuant to the schedule below. Each report must contain the following information: contract number; using department's address, contact name, and telephone number; product ordered; quantity ordered; quantity shipped; and price charged, with totals for each product for each reporting period. The state reserves the right to request additional information or to modify the reporting periods. Reporting periods: Quarterly reports must be submitted in accordance with the following schedule:
  - Reporting period: January 1 to March 31 - Report due April 15
  - Reporting period: April 1, to June 30 - Report due July 15
  - Reporting period: July 1 to September 30 - Report due October 15
  - Reporting period: October 1 to December 31 - Report due January 15
10. Default: In case of default of the contractor, the state may procure the materials or supplies from other sources and hold the contractor responsible for any excess cost occasioned thereby, provided, that if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefore shall be made at a proper reduction in price.

11. Vendor Contact Information:

Sharon Herbert  
Operations Manager  
Tel: 802-775-7722  
Fax: 802-786-9070

Email: [sherbert@earthwastesystems.com](mailto:sherbert@earthwastesystems.com)

If you have any questions regarding this document, please contact:

State of Vermont  
Office of Purchasing & Contracting  
Steve Smith  
Tel. 802-828-4681  
Email: [Steven.smith@Vermont.gov](mailto:Steven.smith@Vermont.gov)

## ATTACHMENT B

### PAYMENT PROVISIONS: SCRAP METAL REMOVAL SERVICES

1. Contractor will dispose of scrap metal and pay the customer a percentage of scrap metal revenue generated as specified in the contract, based on AMM Index Posting Pricing for the Boston "export yard buying price" for mixed and unsorted scrap iron and steel, "No. 2, heavy melt, low side price and the Boston "consumer buying prices" for Presorted Aluminum shall be, "Aluminum mixed clips", low side price on the date of pickup. No other rebate structure will be allowed.
2. Scrap Metal Removal Services: Contractor will rebate customer 70.2% of AMM Index Posting for the Boston Export Yard Buying Pricing for mixed and unsorted scrap iron and steel, #2, heavy melt price for scrap metal removed from site. There are no charges to the State of Vermont for hauling or containers.
3. Aluminum Scrap Metal Removal Services: Contractor will rebate customer 85% of AMM index posting for the Boston Consumer Buying Prices for aluminum mixed clips, low side price for scrap aluminum removed from site. There are no charges to the State of Vermont for hauling or containers.
4. Rebate Payment Package Shall Include:
  - Rebate package shall be done on the basis of each pick up completed.
  - Rebate check (all payments shall be made by company or bank check, no cash).
  - Weigh slips for each commodity weighed (statement of hauling).
  - Statement on company letterhead clearly showing the quantity in gross tons or lbs, #2 bundle or aluminum.
  - Statement will also show any miscellaneous items picked up (i.e. Freon appliance) and the fee charged or the Rebate given on behalf of the item.
  - Date, state agency and physical location where the pick-up was located.
  - Contract price per GT or LB (depending on commodity) for rebate.
  - A copy of the AMM Index Postings for the date of pick up and all relative commodities to support the transaction value.
  - Gross, tare and net weights.
  - Adjustment/reason.
  - Description of itemized item picked up (i.e. cars).
5. Contractor will include a Statement of Hauling with the payment to the customer.
6. Contractor will include a copy of the AMM Index Posting for the date of pickup to support the transaction value.
7. Payment is to be made within thirty days of the date of scrap metal removal from customer's site.
8. The State shall not be responsible for any unauthorized expenses or services incurred and/or performed by the Contractor. All invoices must have the contract number on the invoice.

9. The quoted schedule of rates will remain in effect for the initial contract period of two years. There will be no adjustments for fuel or other costs which are subject to change.

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED JULY 1, 2016**

**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 the 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. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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 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 or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**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 the 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 the Contract, 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. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, 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 the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, 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 the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR 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.

**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 the 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 the 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 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 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**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. Certification Regarding Use of State Funds:** In the case that 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.

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

**25. 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.

**26. 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.

**27. 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.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- 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. No Implied Waiver of Remedies:** A 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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 continental United States, except with the express written permission of the State.

(End of Standard Provisions)