

From: [Mishaan, Jessica](#)
To: [REDACTED]
Subject: your public records request
Date: Thursday, May 26, 2022 7:52:10 AM
Attachments: [2022-05-26 Mishaan response to Morrison.pdf](#)

Dear Belinda Morrison,

Please find the attached response to your public records request.

Thank you,

Jessica Mishaan | Paralegal

Office of the Attorney General | General Counsel and Administrative Law Division

109 State Street Montpelier, VT 05609-1001

p (802) 828-5500

Pronouns: she/her/hers

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171

<http://www.ago.vermont.gov>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

May 26, 2022

Via email to [REDACTED]

Belinda Morrison

Re: Public Records Request

Dear Belinda Morrison,

I write in response to your Public Records Act request dated May 20, 2022, and received on May 23, 2022, in which you request “(1) *Contract #41166 approved for \$50,000 in legal services for the State Auditor's Office*”.

Please find the attached documents in response to your request.

To the extent you feel information has been withheld in error, you may appeal to the Deputy Attorney General, Joshua Diamond. Such appeal should be in writing:

Joshua Diamond
Deputy Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

/s/ _____
Jessica Mishaan
Paralegal

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION – Form AA-14 (1/8/2019)

Note: All sections must be completed. Incomplete forms will be returned to the originating department.

I. CONTRACT INFORMATION

Agency/Department: Office of the Attorney General / Office of the State Auditor Contract #: 41166
 Vendor Name: Boxer Blake and Moore PLLC Amendment #:
 Vendor Address: 24 Summer Hill Street, PO Box 948, Springfield VT, 05156 VISION Vendor No: 329352
 Starting Date: 12/24/20 Ending Date: 12/24/22 Amendment Date:
 Summary of agreement or amendment: Legal services to litigate claims on behalf of the Vermont State Auditor of Accounts against One Care Accountable Care Organization, LLC

II. FINANCIAL & ACCOUNTING INFORMATION

Maximum Payable: \$ 50,000.00 Prior Maximum: \$ Prior Contract # (If Renewal):
 Current Amendment: \$ Cumulative amendments: \$ % Cumulative Change: %
 Business Unit(s): 01250 Vision Account(s): 507200
 Estimated Funding Split: 100% G-Fund % S-Fund % F-Fund % GC-Fund % E-Fund
 % T-Fund % Other Fund / Fund Name:

III. PROCUREMENT & PERFORMANCE INFORMATION

A. Identify applicable procurement process utilized.
 Standard bid or RFP Simplified Bid Sole Source (Sec B) Qualification Based Selection Statutory
 B. If Sole Source Contract, contract form includes self-certification language? Yes N/A
 C. Contract includes Performance Measures/guarantees to ensure the quality and/or results of the service? Yes No

IV. TYPE OF AGREEMENT (Select all that apply)

Personal Service Architectural/Eng. Construction Financial Trans. Zero Dollar
 Non-Personal Service Info. Technology Marketing Privatization Professional Svc.
 Commodity Retiree/Former SOV EE Other:

V. SUITABILITY FOR CONTRACT FOR SERVICE

Yes No N/A Does this contract meet the federal determination of an Independent Contractor? If "NO", the contractor must be set up and paid on Payroll through the VTHR system.

VI. CONTRACTING PLAN APPLICABLE

Is any element of this contract subject to a pre-approved Agency/Dept. Contracting Waiver Plan? Yes No

VII. CONFLICT OF INTEREST

By signing below, I (Agency/Dept. Head) certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business:
 Yes No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

VIII. PRIOR APPROVALS REQUIRED OR REQUESTED

Yes No Agreement must be Certified by the Attorney General under 3 VSA §342 (sign line #4 below)
 Yes No Attorney General review As to Form is required (\$25,000 and above) or otherwise requested: M.A.
 (AAG initial)
 Yes No Agreement must be approved by the Secretary of ADS/CIO
 Yes No Agreement must be approved by the CMO; for Marketing services over \$25,000
 Yes No Agreement must be approved by Comm. of Human Resources for Privatization, Retirees, Former Employees, and if a Contract fails the IRS test)
 Yes No Agreement must be approved by the Secretary of Administration

IX. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information (sign in order):

December 29, 2020 E-SIGNED by Joshua Diamond on 2020-12-29 20:48:15 EST
 1 - Date 1 - Agency / Department Head 2 - Date 2 - Agency Secretary (if required)
 3a - Date 3a - CIO 3b - Date 3b - CMO 3c - Date 3c - DHR Commissioner
 December 29, 2020 E-SIGNED by Michelle Anderson on 2020-12-29 17:33:30 EST
 4 - Date 4 - Attorney General 5 - Date 5 - Secretary of Administration

1. Parties

This is a contract for services between the State of Vermont, Office of the Attorney General (hereafter called “State”) and Boxer Blake and Moore PLLC, with a principal place of business in Springfield Vermont, (hereafter called “Contractor”). Contractor’s form of business organization is PLLC. It is the contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter

The subject matter of this contract is services generally on the subject of Legal Services to litigate claims on behalf of the Vermont State Auditor of Accounts against One Care Accountable Care Organization, LLC. Detailed services to be provided by the contractor are described in Attachment A.

3. 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 \$50,000.00.

4. Contract Term

The period of Contractors performance shall begin on December 24, 2020 and end on December 23, 2022. This contract may be extended for two (2) additional one (1) year terms at the discretion of the State.

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

This contract represents the entire agreement between the parties; 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.

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. Attachments

This contract consists of 13 pages including the following attachments which are incorporated herein:

- Attachment A – Specifications of Work to be Performed
- Attachment B – Payment Provisions
- Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date December 2017)
- Attachment D – Other Provisions

9. Order of Precedence

Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

- 1) Standard Contract
- 2) Attachment D
- 3) Attachment C (Standard Contract Provisions for Contracts and Grants)
- 4) Attachment A
- 5) Attachment B

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

By the State of Vermont:

By the Contractor:

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: Joshua R. Diamond

Name: Andrew Boxer, Esq.

Title: Deputy Attorney General

Title: Partner

(Remainder of page intentionally left blank)

**ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED**

The purpose of this contract is for Boxer Blake and Ellis LLC to provide the State of Vermont, Office of the Attorney General with Legal Services to litigate claims on behalf of the Vermont State Auditor of Accounts against One Care Accountable Care Organization, LLC, to obtain accounting records related to the salary and benefits of its employees.

CONTRACT REPRESENTATIVES

Joshua Diamond
Joshua.diamond@vermont.gov
802-595-8317
109 State Street
Montpelier, VT 05609

Andrew Boxer, Esq.
24 Summer Hill Street, PO Box 948
Springfield, VT 05156

SERVICES PROVIDED

Contractor shall provide the Vermont Attorney General's Office with legal services to litigate claims on behalf of the Vermont State Auditor of Accounts against One Care Accountable Care Organization, LLC, to obtain accounting records related to the salary and benefits of its employees. Services shall include advice and the full range of litigation services to pursue the claims, including but not limited to preparation, filing, prosecution, and appeal of civil claims and/or actions for legal recovery and/or relief, conducting discovery, taking and defending depositions, motions practice, assisting with potential settlement negotiations, preparing for and conducting any trial that proceeds, and, if necessary, appellate briefing and argument. The Attorney General's Office at all times will direct the litigation in all respects, including but not limited to the claims to be brought in said litigation, whether and when to file dispositive or other motions, approval and rejection of all settlement offers, and the amount and type of damages and injunctive relief to be brought. Contractor shall also defend any claims, counterclaims, cross-claims, or third party claims asserted against the State. Contractor may also be asked to respond to public records requests, and as requested by the Attorney General's Office, and shall provide resources including the ability to scan, search, redact, and produce responsive documents related to Contractor's work under this Contract, and perform other related tasks as reasonably needed to facilitate the goals and objectives of the anticipated litigation.

Contractor agrees that the attorney assigned to handle the legal services under this contract will be Andrew C. Boxer, Esq. Attorney Boxer may delegate tasks other than court appearances to colleagues at Ellis Boxer & Blake PLLC as long as he directly supervises and maintains overall responsibility for their work. Attorney Boxer shall be considered essential to the performance of this contract. Should Attorney Boxer become unavailable during the period of performance, the State shall have the right to approve any proposed successors, or, at its option, to cancel the remainder of the contract.

PERFORMANCE MANAGEMENT

Contractor shall report to and be subject to supervision of the Attorney General's Office in the conduct of Litigation. Contractor shall consult with the Attorney General's Office, who shall retain control over decision-making, and have final authority over all aspects of the litigation, and/or settlement.

All briefs and other materials to be filed with any court shall first be approved by the Attorney General's Office and provided in draft form in a timely manner for review. Contractor shall provide regular reports to the Attorney General's Office on the status of the litigation, not less than quarterly or more frequently as requested by the Attorney General's Office. Regular status meetings will be held as requested by the Attorney General's Office or Contractor. Contractor shall advise the Attorney General's Office on the conduct of the case(s) and on strategy and tactics for each phase of the case(s).

ATTACHMENT B PAYMENT PROVISIONS

In consideration of the services provided by the Contractor, the State shall pay Contractor a sum not to exceed \$50,000.00. The maximum dollar amount payable under this contract is not intended to guarantee any amount of payment under this contract. The Contractor acknowledges that nothing in this contract shall be construed as requiring the State to request the Contractor to provide services. The Contractor will be paid at the allowable billable rates for products or services actually delivered or performed as specified in Attachment A, and expenses as stated below up to the maximum allowable amount.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State 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.
2. Invoices must be rendered on Contractor's standard billhead or official letterhead and must include a unique identifier (invoice #). Invoicing must contain an itemization of work performed including services performed, dates of service, rates of pay, and hours of work performed as well as a detail of items and cost for any allowable expenses. Invoicing must include any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State.

Payment terms shall be **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documents.

Contractor shall submit invoicing on a monthly basis and shall be submitted to the State at the following address:

Vermont State Auditor of Accounts
ATTN: Doug Hoffer
132 State Street
Montpelier, VT 05633
and a copy to

Joshua Diamond
Joshua.Diamond@vermont.gov
109 State Street
Montpelier, VT 05609

3. SERVICES - Contractor shall be paid for services based on the following rates or schedule:

For services of Andrew C. Boxer, Esq.:	\$150.00 per hour
For services of paralegals at Ellis Boxer & Blake PLLC:	\$ 75.00 per hour

4. EXPENSES: Contractor must provide itemized receipts for allowable reimbursable expenses, with the exception of mileage. The State shall not be responsible for any expenses of the Contractor unless specifically stated below. The State shall reimburse Contractor for the following expenses:

Approved reasonable and necessary travel expenses incurred in the performance of services. Mileage shall be reimbursed at the standard IRS rates. All expenses in excess of \$500 shall require advance approval. Expenses for electronic legal research shall not be included.

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://www.bgs.vermont.gov/purchasing-contracting/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
OTHER PROVISIONS**

1. **Professional Liability Insurance** – Before commencing work on this contract and throughout the term of this contract, contractor shall procure and maintain professional liability insurance for any and all services performed under this contract, with minimum coverage of \$1,000,000.00 per claim and \$1,000,000.00 aggregate.
2. **Legal services** – Contractor will be providing legal services under this contract. Contractor agrees that during the term of the contract he or she will not represent anyone in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. After termination of this contract, contractor also agrees that he or she will not represent anyone in a matter, proceeding, or lawsuit substantially related to this contract.
3. Requirements of Attachment C – Attachment C, Section 8 Insurance is hereby modified.

The General Liability and Property Damage section is deleted in its entirety.

The Automotive Liability section is deleted in its entirety.

The Additional Insured section is deleted in its entirety and replaced with the following language:

Additional Insured: If performance of this Agreement involves construction or 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.