

Commercial and Institutional Services
(Includes Access to LIMF Exterior and Common Areas)
Attachment B

Access to DCSEU tools containing customer data: No Access
Access to Residential Premises: No Access
Access to Commercial Premises: Access to Exterior and Common Areas
Driving Required for Scope of Work: Yes

Retrofit services in a market-based model:

1. Solicitation of Customers into Program and Site Assessments

a. The DCSEU will assign potential projects to Subcontractor. The Subcontractor will use the information provided to contact potential customers and conduct an energy audit of the exterior and common area of customer's property. The completed energy audit will be sent to the DCSEU for review and pre-approval of the energy efficiency measures. If approved, the DCSEU will issue a Work Order to Subcontractor to complete the work. The Subcontractor will serve as the principal point of contact with the customer and will be responsible for scheduling a site assessment, per DCSEU program protocols.

b. The DCSEU will also accept potential projects from Subcontractor. The Subcontractor will provide the information used to conduct the energy audit of the customers property. The completed energy audit will be sent to the DCSEU for review and pre-approval of the energy efficiency measures. If approved, the DCSEU will issue a Work Order to the Subcontractor to complete the work. The Subcontractor will serve as the principal point of contact with the customer and will be responsible for scheduling a site assessment, per DCSEU program protocols.

c. Upon receipt of the Work Order, Subcontractor shall complete the site assessment to determine which measures from the Work Order are eligible for retrofit according to the terms and conditions of the DCSEU program protocols and Work Order. Subcontractor shall notify the DCSEU of any variances between the measures eligible for retrofit and the Work Order so that the DCSEU can issue an Amendment to the Work Order.

2. Marketing/Selling of offering to end-use clients

a. The Subcontractor will be responsible for "selling" any potential upgrades to the end-use clients based on program protocols.

3. Installation of Energy Efficient Measures

a. Subcontractor shall install the energy efficiency measures as specified in the Work Order. The Subcontractor shall follow all DCSEU installation program protocols outlined in the Work Order and install the energy efficiency measures according to the manufacturer's specifications.

b. The Subcontractor shall submit to the DCSEU all "as built" program documentation using the forms provided by the DCSEU, per program protocols.

c. Subcontractor shall comply with all DCSEU program protocols including the DCSEU's dispute resolution protocols and protocols specifically relating to remediation efforts in a timely fashion.

INDEFINITE QUANTITY SUBCONTRACT AGREEMENT

Subcontract Number: DC-DC-[Insert the two-digit fiscal year]-[Insert the subcontract number]

Between Vermont Energy Investment Corp. and [Insert the subcontractor's full legal name]

This INDEFINITE QUANTITY SUBCONTRACT AGREEMENT (this "Subcontract") dated to be effective as of [Insert the day] day of [Insert the month] [Insert the year] (the "Effective Date") is between Vermont Energy Investment Corporation ("VEIC") of 128 Lakeside Avenue, Suite 401, Burlington, VT 05401 and [Insert the subcontractor's full legal name name] of [Insert the subcontractor's physical address], hereafter referred to as "Subcontractor."

Preliminary Statement. VEIC has a contract (the "Prime Contract") with the District of Columbia Department of Energy and the Environment ("DOEE") to develop a Sustainable Energy Utility (the "DCSEU") operating in the District of Columbia (the "District") to conduct programs designed to reduce per capita energy consumption, increase renewable energy generating capacity, reduce the growth of peak electricity demand, improve the efficiency of low-income housing, reduce the growth of energy demand of the largest energy users, and increase the number of green-collar jobs in the District (the "Project"). VEIC desires to contract with Subcontractor to provide certain services in connection with the Project; and Subcontractor desires to provide VEIC with such services in connection with the Project.

Agreement. In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS.** Capitalized terms and acronyms used in this Subcontract will have the meanings defined in **Attachment A**, "Definitions and Acronyms."
2. **SCOPE OF WORK.**
 - a. **Subcontractor Scope of Work and Work Orders.** Subcontractor agrees to provide VEIC with the Services during the Performance Period based upon the pricing described in the General Scope of Services and Pricing Provisions set forth in **Attachment B1**. All Services to be provided by Subcontractor will be under the direction of the VEIC Project Manager. All Services provided to VEIC by Subcontractor under this Subcontract will be undertaken based upon one or more "Work Orders" issued by VEIC to the Subcontractor using the template attached as **Attachment B2**, which must be countersigned by an authorized representative of Subcontractor. No work may be undertaken until the Work Order has been fully executed by VEIC and Subcontractor.
 - b. **Work Order Content.** Each Work Order will contain (i) the specific Subcontract Scope of Work to be performed; (ii) the pricing schedule that will pertain (e.g. fixed fee, hourly pricing, or unit pricing); (iii) a not-to-exceed value ("NTE"); (iv) a schedule for performance; and (v) other items as VEIC deems appropriate. Upon request of VEIC, Subcontractor, at its own cost and expense and without billing any such costs to VEIC, will assist VEIC in developing an individualized Subcontract Scope of Work for each Work Order.
 - c. **Terms and Conditions.** Every Work Order is subject to and governed by the terms and conditions of this Subcontract. The terms of this Subcontract cannot be varied by a Work Order and any provisions in a Work Order purporting to amend this Subcontract shall not be binding on

VEIC. In the event of any conflict between a Work Order and this Subcontract, the terms of this Subcontract shall control.

- d. **No Guaranteed Work Orders.** Notwithstanding the Subcontract Scope of Work, any NTE and/or the MLA, nothing herein will obligate VEIC to issue any Work Orders to Subcontractor, nor does VEIC commit to providing Subcontractor with any particular level of work under this Subcontract.
- e. **Changes.** Changes to the Subcontract Scope of Work may be made only by written amendment to the applicable Work Order(s) in accordance with the provisions of Section 35. Subcontractor bears all risks for cost incurred by exceeding an NTE or MLA without negotiating and executing an amendment to the existing NTE or MLA before the cost overrun occurs. Notwithstanding the foregoing, VEIC reserves the exclusive right, in its sole discretion, to temporarily or permanently reduce the level or scope of all or any elements of the Subcontract Scope of Work or a Work Order at any time; provided that VEIC will provide, five (5) days' advance written notice to Subcontractor of any such reduction (unless such notice would be impracticable under the circumstances). VEIC also retains rights of termination for cause and without cause as set forth in Sections 14 and 15 of this Subcontract.
- f. **Authorized Personnel.** The following Subcontractor staff are authorized to provide services under this Subcontract:

[List of all authorized subcontractor staff.]

OR

Subcontractor shall provide a list of authorized Subcontractor staff to the Project Manager for approval within 5 business days of signing this Subcontract. If Subcontractor's cumulative value of contracts involving District funds is less than \$300,000, Subcontractor shall list its personnel authorized to provide Services under this Subcontract on **Attachment D**. If Subcontractor's cumulative value of contracts involving District funds is equal to or greater than \$300,000, Subcontractor shall complete **Attachment E**. For clarity, the \$300,000 in District funds is an aggregate of all of Subcontractor's contracts involving District funds, not only contracts with VEIC.

- g. **Updated Personnel Lists.** Before any additional personnel may commence work under any Work Orders, (i) Subcontractor must provide an updated list of the additional Subcontractor personnel in the formats provided in **Attachment D** or **Attachment E**, as appropriate, during the Performance Period, (ii) and the updated list must be pre-approved by the Project Manager.
- h. **Monthly Progress Reports.** For each month in which Subcontractor performs any Services pursuant to one or more Work Orders, Subcontractor must submit to VEIC a monthly progress report by no later than the fifth business day of each month, covering the previous month (each a "Progress Report"). Each Progress Report will be in letter form, outlining the actual Services performed since the previous Progress Report, together with any problems identified with the Services, budget, and schedule for performance, as well as remedial actions planned.
- i. **Interim Work Products.** Upon request of VEIC during the Performance Period, Subcontractor shall provide VEIC with intermediate work products as they are completed, including interim analyses, working drafts, and memoranda prepared for the Services.

3. **PERFORMANCE PERIOD.** The “Performance Period” for this Subcontract will cover the period between the Effective Date and **Month Day, 2018**, unless amended or terminated earlier in accordance with the provisions of this Subcontract. Any interim dates for completion of the Services, including the due date of any deliverables, are as specified in each Work Order. Time is of the essence in undertaking all of Subcontractor’s obligations under this Subcontract.
4. **DOCUMENTATION REQUIREMENTS.** Subcontractor must submit to VEIC an executed Conflict of Interest Statement on the form attached to this Subcontract as Attachment F. Until the completed form is on file with VEIC, VEIC shall be under no obligation to pay any invoices submitted by Subcontractor.
5. **FEES AND PAYMENTS.**
 - a. **Payment of Invoices.** Subcontractor will be paid in accordance with **Attachment C**, “Invoicing and Payments,” and the provisions of this Section 5.
 - b. **Maximum Fee for Work Orders.** Subcontractor billings including all of Subcontractor’s fees and reimbursable costs will not exceed the total maximum fee of the particular Work Order(s) issued.
 - c. **Maximum Limiting Amount.** The Maximum Limiting Amount or MLA is the maximum cumulative value of all Work Orders issued under this Subcontract, as set forth in subsection d below. It is understood that the MLA will include all of Subcontractor’s costs and expenses to perform the Services. Subcontractor will not exceed the MLA except when overages have been approved by VEIC in a written amendment to this Subcontract in accordance with the provisions of Section 35 prior to Subcontractor exceeding the MLA. ***SUBCONTRACTOR BEARS ALL RISKS FOR COST OVERRUNS INCURRED BY EXCEEDING THE MLA WITHOUT NEGOTIATING AND EXECUTING A WRITTEN AMENDMENT TO THE MLA SET FORTH IN THIS SUBCONTRACT BEFORE THE COST OVERRUNS OCCUR.***
 - d. **Current MLA.** The MLA for this Subcontract during the Performance Period is **[Insert the MLA in written format]** U.S. Dollars (**[\$[Insert the MLA in numeric format]**).
 - e. **MLA Reduction.** The parties understand that VEIC cannot predict with certainty the level of utilization of any Subcontract during the Performance Period. The MLA does not represent a guaranteed payment amount to Subcontractor, nor does it obligate VEIC to issue Work Orders, nor does it serve as an implied commitment to VEIC providing Subcontractor with any particular level of work under this Subcontract. VEIC reserves its right in its sole discretion to decrease the MLA at any point in the term of this Subcontract. In the event that VEIC determines that the MLA shall be decreased, it will provide notice of such decrease to Subcontractor in accordance with the provisions of Section 25, and such decrease in the MLA shall be binding upon delivery. Notwithstanding the foregoing, VEIC will not reduce the MLA below the amount of any executed and outstanding Work Orders, or any completed Work Orders.
 - f. **Effect of Payment.** Payment by VEIC for Services or Products under a Work Order will not be construed as (i) an acceptance of any Services or Products, or (ii) a waiver or limitation of any of VEIC’s rights or remedies under this Subcontract or at law or in equity with regard to Services or Products that do not comply with or conform to the Work Order, the Subcontract Scope of Work, or other provisions in this Subcontract.

- g. **Submission of Invoices.** Subcontractor will invoice VEIC monthly for allowable costs as specified in the Subcontract Scope of Work and/or the applicable Work Order(s). Invoices shall be submitted as directed, and with the information required on **Attachment C.** All project-related materials, supplies, and equipment purchased by Subcontractor or its subcontractors must be installed prior to submitting an invoice to VEIC for reimbursement of costs incurred.
- h. **Expenditures requiring prior written approval.** The following expenditures shall not be reimbursable without prior written approval from VEIC and DOEE:
 - i. Any expenditures on food and beverages (alcoholic and non-alcoholic), except as part of an employee's travel expenses. Alcoholic beverage shall not be reimbursable under any circumstances without prior written approval by VEIC and DOEE.
 - ii. Any expenditure on sponsorship of a third-party event or any expenditure of funds to cover part or whole of the costs of a third-party event.
 - iii. Any expenditure on valet parking, or employee or consultant parking.
 - iv. Any expenditure on rent and utilities for employees or consultants.
- i. **Separate line items on invoices.** Subcontractor shall list any expense on food, beverage, sponsorships, valet parking, employee or consultant parking, or rent and utilities for employees or consultants, as a separate line item on its invoices, and shall only seek reimbursement for such expenses after obtaining written approval from VEIC and DOEE.

6. INDEPENDENT CONTRACTOR.

- a. **No Employment Relationship.** Subcontractor is an independent contractor. This Subcontract does not establish an employment, partnership or joint venture relationship between VEIC and any of Subcontractor's employees. Accordingly, all persons employed or retained by Subcontractor in connection with the performance of its obligations hereunder shall be its employees or agents or those of its authorized subcontractors or suppliers, as the case may be, and not the employees or agents of VEIC in any respect. It is further understood that Subcontractor is free to work for other parties during the term of this Subcontract.
- b. **No Agency; Acceptable Practice.** Subcontractor shall not represent or hold itself out to anyone as being an agent of VEIC.
- c. **Taxes and Employee Benefits.** Subcontractor shall be obligated to pay all taxes arising from the compensation payable hereunder. Subcontractor is solely and exclusively responsible for all applicable federal, state and/or local taxes and withholdings with respect to any fees or expense reimbursements Subcontractor may receive as a result of this Subcontract, and other statutory or contractual obligations of any sort, including but not limited to, VEIC employee benefits such as workers' compensation insurance, health insurance, and unemployment insurance.
- d. **No Claims or Recourse.** None of Subcontractor's employees shall have any claim against VEIC for employee benefits, including vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, unemployment insurance benefits, or other employee benefits of any kind. Subcontractor understands that Subcontractor is not a named insured or additional insured on any VEIC insurance policy. Because Subcontractor is an independent contractor, it shall not have any recourse against any of VEIC's affiliates, members,

partners, joint venturers, shareholders, officers, directors, or employees for any reason, other than as set forth in the Subcontract. Further, to the extent that VEIC or any affiliate of VEIC is assessed any fines, penalties, taxes or costs related to the independent contractor relationship between Subcontractor and VEIC, Subcontractor shall indemnify and hold harmless VEIC or its affiliates in full.

- e. **Performance and Timing.** Other than VEIC providing overall deadlines and general production guidelines, Subcontractor will determine the times, method, details and means of performing the Services identified in Section 1 of this Subcontract, with appropriate consultation with VEIC.
- f. **Workspace and Materials.** Subcontractor is responsible for supplying and using Subcontractor's own office space, business equipment, telephone, copier and other materials necessary to conduct Subcontractor's business and to perform the Services contemplated by this Subcontract.

7. INSURANCE.

- a. **Minimum Insurance Coverages.** Before commencing the Subcontract Scope of Work, Subcontractor will provide Certificates of Insurance to VEIC and the DOEE to show that the following minimum insurance coverages are in effect:
 - i. **Commercial General Liability Insurance.** Subcontractor shall provide evidence satisfactory to VEIC with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; bodily injury and property damage including, but not limited to: premises-operations; broad form property damage; products and completed operations; personal and advertising injury; and contractual liability and independent contractors; however, for subcontracts under \$100,000, Subcontractor may instead provide evidence satisfactory to VEIC with respect to the services performed that it carries \$1,000,000 in Umbrella and Liability Insurance. The policy coverage will be primary and non-contributory with any other insurance maintained by the District and VEIC, and will contain a waiver of subrogation, as set forth in Section 7.f. Subcontractor will maintain completed operations coverage for five (5) years following final acceptance of the work performed under this Subcontract.
 - ii. **Automobile Liability Insurance.** Subcontractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this Subcontract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage. The automobile liability insurance must be held by Subcontractor, and not its individual employees. In the event that Subcontractor is not using motor vehicles when this Subcontract commences but subsequently determines use of a motor vehicle is necessary for performance of the Subcontract, Subcontractor shall immediately notify VEIC and obtain the minimum insurance requirements set forth in this Subsection a.ii.
 - iii. **Workers' Compensation Insurance.** Subcontractor shall carry Workers' Compensation insurance, and with respect to such insurance shall comply with the statutory mandates of the District and any other jurisdiction in which the contract is performed.
 - iv. **Employer's Liability Insurance.** Subcontractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.
 - v. **Umbrella or Excess Liability Insurance.** Subcontractor shall provide umbrella or excess liability (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$3,000,000 per occurrence. All liability coverage must be scheduled under the umbrella and that the combined limits of the above required policies should be no less than

\$3,000,000 aggregate. However, for subcontracts under \$100,000, Subcontractor may instead provide evidence satisfactory to VEIC with respect to the services performed that it carries \$1,000,000 in Umbrella and Liability Insurance.

- b. **Certificates of Insurance Requirements.** The Certificate of Insurances for the commercial general liability insurance and umbrella or excess liability insurance will name VEIC and the District as additionally insured parties as their interests may appear. In no event will any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by VEIC. All insurance will be written with financially responsible companies authorized to do business in the District or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher.
- c. **Cancellation Notice; Duration.** All policies will provide that VEIC and the DOEE will be given thirty (30) days prior written notice from the insurance carrier in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown in the certificate. It is the responsibility of Subcontractor to maintain current Certificates of Insurance on file with VEIC and DOEE through the Performance Period of this Subcontract. Subcontractor will provide VEIC and the DOEE with ten (10) days prior written notice in the event of non-payment of premium. Subcontractor will maintain this insurance during the term of this Subcontract and for a period of five (5) years following VEIC's and the DOEE's final acceptance of the work performed under this Subcontract.
- d. **Liability.** These are the required minimum insurance requirements established by the District. However, the required minimum insurance requirements provided above will not in any way limit Subcontractor's liability under this Subcontract.
- e. **Subcontractor's Property.** Subcontractor is solely responsible for any loss or damage to its personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment.
- f. **Waiver of Subrogation.** To the fullest extent allowable under all policies and under law, Subcontractor and its insurers hereby waive all rights of subrogation against the District and VEIC, and each of their respective directors, officers, employees, agents and representatives. If requested by VEIC, Subcontractor shall also furnish to VEIC copies of endorsements as evidence of waiver of subrogation.
- g. **Measure of Payment.** Neither the District nor VEIC will make any separate measure or payment for the cost of any required insurance and bonds. Subcontractor will include all of the costs of such insurance and bonds in Subcontractor's fees.
- h. **Notification.** Subcontractor will immediately provide VEIC with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to VEIC.
- i. **Submission Requirements.** Subcontractor will submit the Certificates of Insurance to VEIC as part of the electronic execution process for this Subcontract giving evidence of the required coverage as specified in this Section 7 prior to commencing work. Unless and until Certificates of Insurance are submitted to VEIC that comply with the requirements of this Section 7,

Subcontractor is not authorized to commence Services hereunder and VEIC shall be under no obligation to pay any invoices submitted by Subcontractor.

- j. **Disclosure of Information.** Subcontractor agrees that the District and VEIC may disclose the name and contact information of its insurers to any third party presenting a claim against the District and/or VEIC for any damages or claims resulting from or arising out of work performed by Subcontractor, its agents, employees, or authorized subcontractors in the performance of this Subcontract.
- k. **No Warranty as to Coverages; Failure to Maintain Insurance.** No warranty is made by VEIC that the coverages and limits listed herein are adequate to cover and protect the interests of Subcontractor for Subcontractor's operations. The required coverages are solely minimums that have been set to protect the interests of VEIC. None of VEIC's insurance coverage will apply to Subcontractor. **IN NO EVENT WILL VEIC BE LIABLE TO SUBCONTRACTOR FOR SUBCONTRACTOR'S FAILURE TO MAINTAIN ADEQUATE INSURANCE.**
- l. **Broader Coverage; Higher Limits.** If Subcontractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown above, VEIC and the District require and shall be entitled to the broader coverage and/or the higher limits maintained by the Subcontractor and its subcontractors.

8. **REPRESENTATIONS AND WARRANTIES OF SUBCONTRACTOR.**

- a. **Representations, Warranties and Covenants.** Subcontractor represents, warrants and covenants to VEIC as follows:
 - i. **Status.** That Subcontractor's full legal name is set forth in the first paragraph of this Subcontract. Subcontractor is a **[Insert the subcontractor's entity status]** validly existing, and in good standing under the laws of the **[Insert the state]**. **[Delete the preceding sentence if the Subcontractor is not an entity.]**
 - ii. **Due Authorization.** That this Subcontract has been duly authorized, executed and delivered by Subcontractor, and constitutes a legal, valid and binding obligation of Subcontractor, enforceable in accordance with its terms. The officer of Subcontractor signing this Subcontract on behalf of Subcontractor has been duly authorized to sign the Subcontract on behalf of Subcontractor.
 - iii. **Litigation.** That there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Services or VEIC's rights hereunder.
 - iv. **Personnel Warranty.** That Subcontractor will provide highly qualified supervision and sufficient, competent personnel to perform the Services.
 - v. **Quality of the Services.** That the Services shall conform with the standards of care and practice appropriate to the nature of the Services and that the Services shall be free from material defects, errors and omissions, and in conformity with the terms and conditions of this Subcontract. Services not conforming to these standards shall be considered defective.

- vi. **Due Diligence.** That Subcontractor will carry out the Services with due diligence and efficiency, in a practical manner designed to promote the purposes of the Project.
 - vii. **Compliance with Laws.** That its performance of the Services shall comply with all applicable laws, statutes, ordinances, rules, regulations and orders enacted by or promulgated by federal, state, municipal or other governmental authorities, including, but not limited to, those relating to safety, employment, equal employment opportunity, the environment, taxes and withholding, labor, and the specific regulations and statutory requirements set forth in Sections 9, 10 and **Attachment G** and **Attachment H**. This warranty shall extend to Subcontractor's agents, employees and subcontractors.
 - viii. **Licenses, Approvals and Fees.** That before starting on any part of the Services, it and its employees and subcontractors (i) shall be licensed in accordance with all applicable laws; (ii) shall procure all necessary permits, licenses, concurrences, and other governmental approvals; (iii) shall pay all charges and fees; and (iv) shall give all notices necessary or incidental to the due and lawful prosecution of the Services. Performance of the Services shall comply with all of the terms, conditions and limitations contained in any certificate, permit or license applicable to the Services, and Subcontractor shall immediately notify VEIC if any required permit, license, concurrence, or approval expires or is suspended or revoked.
 - ix. **Protection of Homeowner's Property.** That it shall adequately protect and avoid damage to the property of the homeowner(s) at the locations where the Services will be performed, including, but not limited to, ensuring that the premises where any solar panels are being installed are structurally sufficient to support the panels, and be responsible for any damage or injury arising directly or indirectly from the performance of the Services.
 - x. **Protection of Adjacent Property.** That when adjacent property to a property where Services are being performed is affected or endangered by any of the Services performed under this Subcontract, it shall be the responsibility of Subcontractor, at Subcontractor's expense, to take whatever steps are necessary for the protection of the adjacent property and to notify the owner of the adjacent property regarding the possible hazards.
 - xi. **Debris and Waste Materials.** That it shall keep the property at which the Services are performed clean and orderly at all times during the performance of the Services, shall remove from the work site all debris and waste materials resulting from the performance of the Services, and shall dispose of all debris and waste materials in accordance with applicable laws and regulations.
 - xii. **Bankruptcy.** Subcontractor shall provide VEIC with prompt notice, and in any event, within seven days of the occurrence of any of the following: Subcontractor is adjudged bankrupt or insolvent, files a petition to take advantage of any bankruptcy or insolvency law, makes a general assignment for the benefit of its creditors; and/or a trustee or receiver is appointed for Subcontractor or for any of Subcontractor's property.
- b. **Breach of Warranty.** If any of the Services is defective or otherwise breaches the warranties made in this Subcontract, then VEIC may require correction or re-performance of same to VEIC's satisfaction without further cost to VEIC. If such required correction or re-performance is not properly or timely performed, then VEIC may terminate Subcontractor's performance, have such services performed by a third party, and, in addition to any other remedies VEIC may have,

deduct from payments then or thereafter due to Subcontractor, the costs thereby incurred by VEIC.

- c. **Payment or Acceptance.** Neither final payment nor acceptance of the work shall relieve Subcontractor of responsibility for failure to meet the warranties made in the Subcontract.

9. SUBCONTRACTOR REPRESENTATION AND COVENANTS REGARDING EMPLOYEES.

- a. **Certified Business Enterprises.** VEIC is required under the Prime Contract to be a signatory to the CERTIFIED BUSINESS ENTERPRISE PARTICIPATION AND UTILIZATION AGREEMENT, Article I, Section 1.1 Utilization of Certified Business Enterprises, with the DSLBD (the “CBE Agreement”). In order to ensure that VEIC meets its requirements under the CBE Agreement, Subcontractor must certify on the signature page hereto as to its CBE status. In addition, in the event that Subcontractor has contracts with VEIC totaling in excess of five thousand dollars (\$5,000.00), Subcontractor must comply with all CBE Agreement compliance reporting requirements as provided by VEIC from time to time, unless compliance has been waived by VEIC.
- b. **First Source Employment Agent.** All Subcontractors awarded contracts equal to or in excess of three hundred thousand dollars (\$300,000.00) where the funds received are derived from District funds must sign the First Source Employment Agreement attached hereto as **Attachment E** and comply with all requirements therein. ***FAILURE TO EXECUTE THE FIRST SOURCE EMPLOYMENT AGREEMENT OR COMPLY WITH ALL REQUIREMENTS THEREIN SHALL RESULT IN PAYMENTS HEREUNDER BEING WITHHELD BY VEIC UNTIL SUBCONTRACTOR IS IN COMPLIANCE.***
- c. **Compliance Training.** If Subcontractor is required to sign the First Source Employment Agreement, Subcontractor will attend Compliance Training and submit to VEIC and VEIC’s designated compliance advisor Monthly Contracting and Employment Compliance Reports as requested by VEIC for each month in which it receives funds or is under contract to perform Services. ***FAILURE TO ATTEND COMPLIANCE TRAINING AND/OR SUBMIT SUCH REPORTS SHALL RESULT IN PAYMENTS HEREUNDER BEING WITHHELD BY VEIC UNTIL SUBCONTRACTOR IS IN COMPLIANCE.***
- d. **Green Job Creation.** VEIC has contractually agreed to ensure Green Job creation within the District of Columbia under the Prime Contract. Subcontractor covenants that it will comply with all goals, directions, and reporting required under the Prime Contract to achieve such contractual requirements, as directed by VEIC. For each employee of Subcontractor, one of the following original, current sources containing the resident’s name and current proof of District residency must be submitted to VEIC to establish District Residency during the Performance Period:
- Utility bill (water, gas, electric, oil, or cable): provide entire bill;
 - Telephone bill (no cell phones or pager bills accepted): provide entire bill;
 - DC Property Tax bill;
 - Valid Homeowner or Renter insurance reflecting name and DC address;
 - Lease or rental agreement with name of lessee or renter;

- Deed or Settlement Agreement;
- Letter/Card from CSOSA, DC DOC or USPO (Identification card only);
- Notarized verification form from a District Social Services agency (District Homeless Only);
- Veteran’s Home ID card with letter; or
- DC DMV Proof of Residency.

Subcontractor acknowledges and agrees that VEIC and/or DOEE may require additional proof of District Residency during the Performance Period, and Subcontractor agrees to provide the same upon request of VEIC or DOEE.

- e. **Employment of District Residents.** VEIC will give preference in the awarding of contracts to subcontractors who employ District residents. The higher percentage of District residents a subcontractor employs, the more preference will be shown. Subcontractor covenants and agrees that for the duration of the Performance Period:
- i. all new employees or individuals hired after October 1, [insert the year] to perform the primary functions of this Subcontract will be paid at or above the District’s Living Wage. For purposes of this clause, “primary functions” will include, but are not limited to, work activity that reflects the primary purpose of this Subcontract (e.g., onsite installation work);
 - ii. Subcontractor will report to VEIC all hours worked by its employees at or above District’s Living Wage as Green Job hours as required by this Subcontract and the Prime Contract;
 - iii. if Subcontractor fails to meet a 75% District workforce requirement for the primary functions of this Subcontract by December 1, [insert the year]. Subcontractor agrees to actively participate in VEIC’s Workforce Development Program;
 - iv. Subcontractor agrees to advertise its job openings in the District and actively recruit District residents for all jobs related to this Subcontract; and
 - v. Subcontractor will supply any and all data requested by VEIC in response to compliance with local or federal funding on this Project in a timely manner based on the DCSEU’s compliance reporting schedule. ***FAILURE TO PROVIDE SUCH DATA MAY RESULT IN VEIC WITHHOLDING PAYMENT HEREUNDER, AND/OR TERMINATING THIS SUBCONTRACT AS PROVIDED HEREIN.***

10. APPLICABLE FEDERAL AND DISTRICT REGULATIONS AND STATUTORY REQUIREMENTS.

- a. **Federal and District Laws.** Subcontractor must comply with all federal and District regulatory and statutory requirements applicable to this Subcontract. A summary list of these regulations and requirements is attached hereto as **Attachment G**. Additional regulations and requirements may apply to this Subcontract from time to time, and upon learning of any such requirement, VEIC may notify Subcontractor in writing of same, upon which notification, such requirement shall be incorporated into this Subcontract without the need for Subcontractor’s consent to the same.

- b. **Davis-Bacon Act.** If the Services performed under this Subcontract are subject to the Davis-Bacon Act, Subcontractor will comply with the provisions and procedures contained in **Attachment H.**
- c. **Effect of Noncompliance.** *FAILURE OF SUBCONTRACTOR TO COMPLY WITH ANY APPLICABLE REGULATION MAY BE THE BASIS FOR VEIC TO WITHHOLD PAYMENTS DUE UNDER THE TERMS OF THIS SUBCONTRACT AND/OR FOR TERMINATION OF THIS SUBCONTRACT BY VEIC.*

11. INSPECTIONS.

- a. Subcontractor has the duty to control and direct the details of the Services rendered and installation of any Products as part of the Project, where the foregoing is part of the Subcontractor Scope of Work or the Work Order(s). VEIC seeks to fulfill a public function in undertaking the Project, and recognizes that performance of the Services is dependent upon the specialized skills and training of Subcontractor. However, the Services must meet the approval of VEIC and DOEE and shall be subject to their rights of inspection and rights to secure satisfactory completion of the Services and this Subcontract. Subcontractor, as requested, shall report directly to the Authorized VEIC Representative or his/her designee regarding all of Subcontractor's activities hereunder.
- b. VEIC and DOEE have the right to inspect and test all Services called for by this Subcontract at reasonable times and places during the term of this Subcontract. VEIC and DOEE will perform inspections and tests in a manner that will not unduly delay the work. If VEIC or DOEE performs inspections or tests on the premises of the Subcontractor or its subcontractor, the Subcontractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties. For purposes of this Subcontract, if the Subcontract Scope of Work and/or Work Order requires entry on to property of third persons, the Subcontractor acknowledges and agrees that the Authorized VEIC Representative, the CO, and their designees shall have the same rights to access the premises of any location where Services are performed in order to complete inspections. In the event that Subcontractor has not entered into an incentive agreement or other agreement with such third parties that allows such access, Subcontractor shall obtain an agreement from such third party allowing the Authorized VEIC Representative, the CO and their designees to access the property for up to five years after completion of the Services as required by this Section 11.

12. SETTLEMENT OF DISPUTES. Any dispute arising out of or relating to this Subcontract will be resolved in accordance with the procedures specified herein, which will be the sole and exclusive procedures for the resolution of any such disputes.

- a. **Negotiation.** The parties will attempt to resolve promptly any dispute, claim or controversy arising out of or relating to this Subcontract, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of the agreement to arbitrate, (collectively, a "dispute") by negotiation between representatives who have the authority to settle the dispute. For VEIC, the Director of Operations of the DCSEU or the Managing Director of the DCSEU may be contacted. If the dispute involves either of those two parties, the Executive Director of VEIC may be contacted. Any party may give the other party written notice of any dispute not resolved in the normal course of business pursuant to this subsection. Within fifteen (15) calendar days after delivery of the notice, the receiving party will submit to the notifying party a written response. The notice and response will include (a) a statement of that party's position and a summary of arguments supporting that position, and (b)

the name and title of the representative of that party and of any other person who will accompany the representative. Within fifteen (15) calendar days after delivery of the initial notice, the representatives of both parties will meet at a mutually acceptable time and place to attempt to resolve the dispute. All negotiations pursuant to this provision are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

- b. **Mediation.** Any dispute that has not been resolved by negotiation within forty-five (45) calendar days after initiation of the negotiation shall be determined first by mediation. The parties shall choose an independent third-party mediator by mutual agreement and consent, which shall not be unreasonably withheld. When selecting a mediator, the parties shall consider the qualified mediators of the District of Columbia Office of Administrative Hearings. The mediation shall be administered by the third-party mediator, and a resolution on the dispute may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of mediation from a court of appropriate jurisdiction
- c. **Arbitration.** Any dispute that has not been resolved by negotiation or mediation will be finally resolved by arbitration under the Rules of Conciliation and Arbitration of the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The arbitration will take place in Washington, DC, unless related to CBEs, in which case arbitration will follow the guidelines of the District of Columbia CBE Participation and Utilization agreement. The resulting award will be final and binding on the parties and will be in lieu of any other remedy.
- d. **Injunctive Relief.** Nothing herein shall limit either party's right to seek injunctive relief from a court of competent jurisdiction prior to and during the pendency of negotiations or arbitration under this Section 12.
- e. **Labor Disputes.** Disputes arising out of the labor standards provisions of this Subcontract shall not be subject to the foregoing clauses of this Section 12. All such labor disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this Subsection 12.d. include disputes between the Subcontractor (or any of its subcontractors) and VEIC, DOEE, the U.S. Department of Labor, or their respective employees or representatives.

13. **INDEMNIFICATION.**

- a. **Obligation to Indemnify.**
 - i. **General Indemnification.** Subcontractor agrees to defend, indemnify and hold harmless VEIC, the District, and their respective officers, agencies, departments, agents, and employees (collectively the "Indemnitees") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including costs of defense and attorneys' fees), resulting from, arising out of, or in any way connected to activities or work performed by Subcontractor, Subcontractor's officers, employees, agents, subcontractors, or any other person acting for or by permission of Subcontractor in performance of this Subcontract including, but not limited to, any damage caused to the property of the homeowner(s) at the locations where Services are performed, as well as to any adjacent property. Subcontractor assumes all risks for direct and indirect damage or injury to the property or

persons used or employed in performance of this Subcontract. Subcontractor will also repair or replace the Indemnitees' property that is damaged by Subcontractor, Subcontractor's officers, employees, agents, subcontractors, or any other person acting for or by permission of Subcontractor while performing work hereunder.

- ii. **Intellectual Property Indemnification.** Subcontractor agrees to defend, indemnify and hold harmless the Indemnitees from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including costs of defense and attorneys' fees), resulting from, arising out of, or in any way connected to any alleged: (a) patent, copyright or trademark infringement; (b) unlawful disclosure, use or misappropriation of trade secrets; or (c) any other violation of any third party intellectual property right. If any injunction or restraining order is issued, Subcontractor will, at its expense, obtain for Indemnitee either the right to continue to use and commercialize all allegedly infringing services and work product and the allegedly misappropriated trade secrets, or replace or modify the services and work product to make them non-infringing.
- b. **Effect of Insurance.** The indemnification obligation under this Section 13 will not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor or any party acting under Subcontractor's direction.
- c. **Notice.** VEIC agrees to give Subcontractor prompt written notice of any claim of indemnity under this Section 13, but in any event not later than thirty (30) days after VEIC is made aware of such claim.
- d. **Control of Defense and Settlement.** Additionally, Subcontractor will have the right and sole authority to control the defense or settlement of any claims, provided that no contribution or action by the Indemnitees is required in connection with the settlement.
- e. **Holdback.** Monies due or to become due to Subcontractor under this Subcontract may be retained by VEIC or the District as necessary to satisfy any outstanding claim which the Indemnitees may have against Subcontractor.

14. TERMINATION FOR CAUSE.

- a. **Event of Default.** Any failure of Subcontractor to comply with the terms and conditions of this Subcontract and the Attachments hereto, or any action(s) or inaction that materially threatens Subcontractor's ability to perform the Services and fulfill the objectives of the Project, shall constitute an "Event of Default" under this Subcontract, upon which VEIC may, by written notice to Subcontractor, terminate this Subcontract for cause if such breach is not cured within the applicable cure period (if any). By way of examples only, and without limitation, the following shall constitute Events of Default under this Subcontract:
 - i. Failure of Subcontractor to perform the Services, install the Products, and/or fulfill any other obligation as set forth in the Subcontract Scope of Work, any Work Order, or any authorized amendment to a Work Order;
 - ii. Failure of Subcontractor to timely perform its obligations pursuant to a Work Order, including any authorized amendment to such Work Order;

- iii. Material breach by Subcontractor of any representation or warranty set forth in this Subcontract;
 - iv. Subcontractor fails at any time during the Performance Period to: (i) be licensed or maintain its license(s) in accordance with all applicable laws of the District and its state of incorporation/organization; (ii) procure all necessary permits, approvals, and consents necessary to lawfully perform the Services; or (iii) ensure that performance of the Services complies with all of the terms, conditions and limitations contained in any certificate, permit or license applicable to and obtained in connection with the Services;
 - v. Subcontractor engages in behavior that is dishonest, fraudulent, reckless, or consistently unresponsive, or gives rise to a conflict of interest inconsistent with its obligations under this Subcontract;
 - vi. Subcontractor fails to respond within a reasonable amount of time to or to reasonably cooperate with VEIC's reasonable and material questions, demands or requests to modify or amend Work Orders;
 - vii. Subcontractor fails to correct any nonconforming Services in a reasonable amount of time, or fails to reasonably cooperate or respond to reasonable requests to correct performance, management, or facilitation of this Subcontract where such actions are jeopardizing completion of the Services and fulfillment of the Project objectives; and/or
 - viii. Subcontractor is adjudged bankrupt or insolvent, or files a petition to take advantage of any bankruptcy or insolvency law, makes a general assignment for the benefit of its creditors; and/or a trustee or receiver is appointed for Subcontractor or for any of Subcontractor's property.
- b. **Termination.** VEIC may terminate this Subcontract for cause:
- i. In the cases of an Event of Default pursuant to Sections 14.a.i., ii., iii, vi and/or vii, if Subcontractor does not cure such Event of Default within fourteen (14) calendar days from receipt of notification of such Event of Default from VEIC, or sooner (at VEIC's election) if public safety is involved;
 - ii. In the cases of an Event of Default pursuant to Sections 14.a.iv., v. and/or viii., immediately upon providing Subcontractor notice of termination.
- c. **Close-Out of Services.** In the event of termination, Subcontractor will perform such additional work as is necessary for the orderly filing of documents with VEIC and DOEE to close out the Services. Such work will only pertain to the actual Services and does not include any administrative tasks, such as preparing final invoices. The additional time for filing and closing will not exceed five (5) percent of the total time expended on the undisputed portion of the completed portion of the Services prior to the effective date of termination. Subcontractor will only be compensated for undisputed portions of the completed portion of the work actually performed prior to the effective date of termination, plus the work required for filing and closing. However, no payments for undisputed services or filing and close-out work will be made until and unless VEIC receives payment for the Services from DOEE.
- d. **Transfer of Work.** In the event of termination, Subcontractor will turn over to VEIC all work completed to date, including any Products and other materials and equipment purchased to

complete the Services on one or more Work Orders; all paperwork and related documents; and all other Confidential Information provided to Subcontractor by VEIC, DOEE or any of VEIC's customers pursuant to this Subcontract.

- e. **Final Invoice.** Subcontractor will render a final invoice and supporting information as required on **Attachment C** for Services to VEIC by the 5th business day of the month following the date of termination. If such final invoice is approved by VEIC, VEIC will pay the invoice in accordance with the provisions set forth on **Attachment C**.

15. TERMINATION FOR CONVENIENCE.

- a. **VEIC Termination.** Notwithstanding any other provision of this Subcontract, VEIC may terminate this Subcontract without cause by giving thirty (30) days advance written notice thereof to Subcontractor.
- b. **Effect of Termination.** Upon termination of this Subcontract pursuant to this Section 15, Subcontractor will have no further obligation to provide services to VEIC pursuant to this Subcontract other than to submit all required reports for Services provided. Except for payment of fees to Subcontractor for services rendered prior to the date of termination, VEIC will have no further obligation to pay Subcontractor.
- c. **Final Invoice.** Subcontractor will render a final invoice and supporting information as required on **Attachment C** for Services to VEIC by the 5th business day of the month following the date of termination. If such final invoice is approved by VEIC, VEIC will pay the invoice in accordance with the provisions set forth on **Attachment C**.

16. TERMINATION OF PRIME CONTRACT.

- a. **Automatic Termination.** If the Prime Contract expires or is terminated by VEIC or DOEE for any reason, then upon notice to Subcontractor this Subcontract will automatically terminate on that same date.
- b. **Effect of Termination.** Upon termination of this Subcontract pursuant to this Section 16, Subcontractor will have no further obligation to provide Services to VEIC pursuant to this Subcontract. Except for payment of fees to Subcontractor for Services rendered prior to the date of termination, VEIC will have no further obligation to pay Subcontractor. Any unpaid fees will only be disbursed to Subcontractor if VEIC receives payment of these fees from DOEE. The parties shall adhere to the procedure set forth in Section 15 for Termination for Convenience in closing out the Subcontract.
- c. **Final Invoice.** Subcontractor will render a final invoice and supporting information as required on **Attachment C** for Services to VEIC by the 5th business day of the month following the date of termination. If approved by VEIC, VEIC will pay the invoice in accordance with the provisions set forth on **Attachment C**.

17. STOP WORK ORDER.

- a. **Notice.** VEIC or DOEE may, at any time during the Performance Period, by oral or written notice to Subcontractor, require Subcontractor to stop all or any part of the Services to be performed pursuant to the Prime Contract, for reasons of public safety, or due to concerns

regarding performance of the Services. To the extent feasible in the circumstances, if oral notice is provided by VEIC, VEIC shall follow-up with formal written notice.

- b. **Cessation of Work.** Upon oral or written notice to stop all or any part of the Services, Subcontractor will forthwith comply with its terms by immediately ceasing performance of the Services and any installation of Products until further notice, and by notifying its officers, employees, agents, subcontractors, or any other person acting for or by permission of Subcontractor to stop all work until further notice. Subcontractor will comply with all subsequent instructions provided by VEIC or directly by DOEE.
- c. **Resumption of Work.** VEIC will endeavor in good faith to lift the stop work order and either direct Subcontractor to resume work, or to provide a notice of an Event of Default requiring cure or a notice of Termination For Convenience, at the earliest available opportunity once the issue is addressed.

18. **CONFIDENTIALITY OF DATA, INFORMATION, AND DOCUMENTS.**

- a. **Acknowledgement of Confidential Information.** Subcontractor agrees that all information communicated to it with respect to the Services to be performed under this Subcontract, including any information gained by Subcontractor by reason of association with VEIC, VEIC customers, or DOEE is Confidential Information.
- b. **Mailing Lists.** Subcontractor expressly agrees that it will not use VEIC's mailing lists other than for lawful purposes necessary for performance of the Services hereunder.
- c. **Protective Agreement.** Contemporaneously with execution of this Subcontract, the Subcontractor will read and will abide by the terms and conditions of **Attachment I**, the General Confidentiality Guidelines Memo, and shall cause its authorized representative to execute the same. The authorized representative of Subcontractor shall also execute the Protective Agreement included with **Attachment I**.
- d. **Compliance.** Subcontractor will be responsible for the compliance with this Section 18 by Subcontractor's employees, agents, and subcontractors, and will include this confidentiality obligation in any subcontracts. Subcontractor will require any subcontractors to sign confidentiality agreements with substantially the same terms as the Protective Agreement attached as **Attachment I**.
- e. **Notice of Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing.** Federal law requires VEIC to notify Subcontractor that there are a few limited situations in which Subcontractor will not be liable for the confidential disclosure of a trade secret to the government or in a court filing. First, an individual shall not be criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Second, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

- 19. POLICY ON POLITICAL ACTIVITY.** Subcontractor has reviewed VEIC's policy on Political Activity, and agrees to comply with said policy.
- 20. OWNERSHIP OF DATA, INFORMATION AND DOCUMENTS.** All reports, studies, plans, specifications, data, and other information developed, written or prepared, by Subcontractor pursuant to this Subcontract, will be delivered to and become the property of VEIC (or the DOEE where applicable). Subcontractor will not use VEIC or the DOEE's name, logo, identity, any affiliation, or the service mark and any related logo, without VEIC's and DOEE's prior written consent. Whenever any data, including computer software, are to be obtained from Subcontractor under this Subcontract, the terms contained in **Attachment J**, "Rights in Data" will apply to this Subcontract.
- 21. COMPETITIVE ACTIVITIES.** During the Performance Period, Subcontractor will not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity, engage or participate in any competitive activity relating to the Project or activity to which this Subcontract relates.
- 22. MAINTENANCE OF RECORDS.** Subcontractor will keep, maintain, and preserve at its principal office throughout the term of the Prime Contract and for a period of three years after the end of the Prime Contract full and detailed books, accounts, and records pertaining to the performance of the Subcontract, including without limitation, all bills, invoices, payrolls, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by Subcontractor in the course of such performance. However, if any litigation, claim, or audit is started before the expiration of the three-year period, the records will be retained until all litigation, claims or audit finding involving the records has been resolved.
- 23. AUDIT ADJUSTMENT.** Any payment made under the Subcontract will be subject to retroactive reduction for amounts included therein which are found by DOEE on the basis of any audit of VEIC or Subcontractor by an agency of the United States or the District not to constitute an allowable charge or cost hereunder.
- 24. SUBCONTRACT; ASSIGNMENT AND DELEGATION.** Subcontractor shall not subcontract this Subcontract, nor assign any of its rights or delegate the performance of any of its duties hereunder, without the prior written consent of VEIC, which VEIC may grant or deny in its sole and absolute discretion. Once authorized by VEIC, Subcontractor will provide a revised list (**Attachment D** or **Attachment E**, as appropriate) with the authorized subcontractor. VEIC's consent shall not serve to release Subcontractor from any obligations under the Subcontract. VEIC may assign its rights or delegate the performance of its duties hereunder upon written notice to Subcontractor. Any subcontract, assignment or delegation in violation of this Section 24 shall be null and void.
- 25. PRIMARY CONTACTS AND NOTICES**
- a. VEIC's primary contact is the Project Manager shown below. Subcontractor's primary contact is shown below.
 - b. VEIC and Subcontractor may change the name and/or contact information for their primary contact by providing written notice to the other party. If Subcontractor's physical or mailing address changes, notice of the change must be provided to VEIC.

- c. Any notice or request required or permitted by this Subcontract will be in writing to the appropriate primary contact. Such notice or request will be deemed to be duly made upon delivery by hand, mail, facsimile or electronic mail to the other party, at such address specified below or at such other address specified in writing by the other party.

FOR VEIC:

Please Choose One of the following

Theodore Trabue, Jr.
 DCSEU
 80 M St., SE
 Washington, DC 20003
 Telephone: 202-450-2222 x 4806
 Fax: 202-450-1552
 Email: ttrabue@dcseu.com

Marcus Walker
 DCSEU
 80 M St. SE,
 Washington, DC 20003
 Telephone: 202-479-2222 x 4805
 Fax: 202-450-1552
 Email: mwalker@dcseu.com

Sheryl Dove
 DCSEU
 80 M St. SE,
 Washington, DC 20003
 Telephone: 202-479-2222 x 4847
 Fax: 202-450-1552
 Email: sdove@dcseu.com

FOR SUBCONTRACTOR:

[Insert the subcontractor’s primary contact]
 [Insert the subcontractor’s name]
 [Insert the subcontractor’s mailing address]
 [Insert the subcontractor’s phone number]
 [Insert the subcontractor’s fax number]
 [Insert the subcontractor’s e-mail]

Authorized Signatory Email Address:
 [Insert the authorized signatory’s e-mail]

26. GOVERNING LAW. This Subcontract is made and shall be construed under the laws of the District and applicable federal laws without regard to any conflicts or choice of law provisions thereof, including any arbitration pursuant to Section 12.b. In the event litigation is filed, including obtaining injunctive relief pursuant to Section 12.c., it is agreed by and between the parties hereto that the litigation shall take place in a court of competent jurisdiction in the District and that each party consents to the jurisdiction of such court, and agrees to service of process for any such action if made pursuant to the notice provision in Section 25 of this Subcontract.

27. ATTORNEYS’ FEES. In the event that either party brings a court action, suit or proceeding to enforce this Subcontract, or in the event of an arbitration to resolve a dispute pursuant to Section 12.b., the prevailing party shall be entitled to reimbursement by the other party its reasonable costs, expenses and attorneys’ fees in addition to any other relief granted.

28. SURVIVAL. Any terms of this Subcontract which by their nature survive beyond its expiration or termination shall remain in effect until fulfilled and shall apply to the respective successors and permitted assigns of the parties. By way of example and not limitation, Sections 6, 7, 8, 10, 12, 13, 14.c.,

14.d., 14.e., 15.b., 15.c., 16.c., 18, 19, 20, 22, and 23 shall survive the expiration or termination of this Subcontract.

29. ATTACHMENTS. All Attachments to this Subcontract are incorporated by reference and made a part of this Subcontract.

30. SEVERABILITY; HEADINGS. If any term or provision of this Subcontract will be held to be invalid or unenforceable, the remaining terms and provisions of this Subcontract will be valid and enforceable to the fullest extent permitted by law. The headings and subheadings contained herein are for convenience only and shall not be deemed to control over the plain language of the Subcontract.

31. NONWAIVER. The failure of a party to enforce any one or more of the provisions of this Subcontract will not be construed to be a waiver thereof, nor will such failure affect the validity of the Subcontract, either party's obligations hereunder or the right of either party to enforce any provision of the Subcontract.

32. COUNTERPARTS; ELECTRONIC SIGNATURE AUTHORIZATION. This Subcontract, any amendment to this Subcontract, and/or any Work Order may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original, and all of which shall constitute the same instrument. Signatures of the parties transmitted by facsimile, email or other electronic transmission shall constitute effective execution and delivery of this Subcontract, any amendment to this Subcontract, and/or any Work Order and shall be deemed to be original signatures for all purposes, and each of the parties hereby consents to signature by such means.

33. ENTIRE AGREEMENT. This Subcontract, together with all the Attachments and including duly authorized Work Orders, constitutes the entire agreement between VEIC and Subcontractor and supersedes all prior communications, representations, agreements and understandings whether oral or written made by either of them concerning the subject hereof, expressly including but not limited to subcontracts for prior fiscal years.

34. DOCUMENT PRODUCTION. Within the project schedule established in the Subcontract Scope of Work, Subcontractor agrees to provide VEIC final draft documents in "print-ready" form. All tables and/or links to spreadsheets will be completely filled out with final data. All document formatting will be consistent with the Subcontract Scope of Work guidelines. VEIC will not consider incomplete tables or data, nor format and style inconsistent with the Subcontract Scope of Work, to meet the Subcontractor's requirements as established in the Subcontract Scope of Work.

35. AMENDMENTS AND MODIFICATIONS.

- a. **General.** No modifications, amendments or extensions to the terms and conditions of this Subcontract, any Scope of Work or Work Order will be effective unless reduced to writing and signed by the duly authorized representatives of VEIC and Subcontractor, except as provided herein with respect to VEIC's ability to provide notice of certain changes to Subcontractor without Subcontractor's consent.
- b. **Modified Prime Contract Requirements.** The Subcontractor acknowledges that the Prime Contract may be modified such that additional or modified requirements may need to be reflected in this Subcontract. In such event, VEIC will propose an amendment to this Subcontract to reflect the additional or modified Prime Contract terms and conditions; if the Subcontractor fails to execute the proposed Subcontract amendment within the time period requested by VEIC, VEIC

may terminate this Subcontract immediately and the provisions of Section 16.b and 16.c shall apply.

[Signature pages follow.]

DRAFT

List of Attachments

- Attachment A** Definitions and Acronyms
- Attachment B1** General Scope of Services and Pricing Provisions
- Attachment B2** Sample Work Order
- Attachment C** Invoicing and Payments
- Attachment D** Authorized Employees (NOTE: not required if **Attachment E** is included)
- Attachment E** First Source Employment Agreement and Forms
(Signature Conditionally Required)
- Attachment F** Conflict of Interest Statement
- Attachment G** Special Requirements
- Attachment H** Davis-Bacon and Related Acts, Provisions and Procedures
- Attachment I** General Confidentiality Guidelines Memo and Protective Agreement
(Signatures Required)
- Attachment J** Rights in Data

The following additional attachments are incorporated into this Subcontract by reference:

Attachment Letter	Document
K	U.S. Department of Labor Wage Determination No. 2015-4281 Revision No. 4, dated December 30, 2016
L	Way to Work Amendment Act of 2006 - Living Wage Notice, https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/OLLE%20Living%20Wage%20Notice%202017%20final%2011-17-16.pdf
M	Way to Work Amendment Act of 2006 – Fact Sheet https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/OLLE%20Living%20Wage%202017%20Rate%20Notice.pdf

Attachment A

DEFINITIONS AND ACRONYMS

“CA” means Contract Administrator under the Prime Contract.

“CBE” means a Certified Business Enterprise under the DSLBD’s business certification program. The DSLBD maintains a database of all certified local, small, and disadvantaged business enterprises that are deemed CBEs. Businesses with CBE certification will receive preferred procurement and contracting opportunities.

“CO” means Contracting Officer under the Prime Contract.

“Confidential Information” has the meanings set forth in the General Confidentiality Guidelines Memo and Protective Agreement included as Attachment I.

“DCSEU” has the meaning set forth in the Preliminary Statement.

“DOEE” has the meaning set forth in the Preliminary Statement.

“DSLBD” means the District Department of Small and Local Business Development.

“District” means the District of Columbia.

“FTE” or full-time equivalent means a total of 1,950 labor hours worked in support of the contract and equals one full-time equivalent of a year-round job, i.e., 1 FTE = 1,950 work-hours.

“Green Job” is 1 FTE job held by a District resident who is paid at least a living wage; or a factor of \$200,000 of SEU’s direct cash incentive to end-use customers and/or manufacturers.

“Living Wage” means a minimum hourly wage as determined by the District Department of Employment Services in accordance with the “Living Wage Act of 2006,” Title I of D.C. Law 16-18 (D.C. Official Code §§2-220.01-.11).

“Maximum Limiting Amount” or “MLA” has the meaning set forth in Section 5.c.

“NTE” has the meaning set forth in Section 2.b.

“Performance Period” has the meaning set forth in Section 3 of the Subcontract.

“Prime Contract” has the meaning set forth in the Preliminary Statement.

“Products” means such products, equipment, and materials which are installed, furnished, or supplied by Contractor to third party users as part of the Services.

“Progress Report” shall have the meaning set forth in Section 2.h. of the Subcontract.

“Project” has the meaning set forth in the Preliminary Statement.

“Project Manager” means the individual responsible for managing this Subcontract on behalf of VEIC. Until further notice the Project Manager is the individual set forth in Section 25 of the Subcontract.

“Services” means any and all labor, equipment and other items required for Subcontractor to perform the services set forth in the General Scope of Services and Pricing Provisions (**Attachment B1**) and each Subcontract Scope of Work.

“SEU” or “Sustainable Energy Utility” means the private contractor selected to develop, coordinate, and provide programs for the purpose of promoting the sustainable use of energy in the District (CAEA § 101(19)).

“Subcontract Scope of Work” means Subcontractor’s Scope of Work identified in each Work Order approved by VEIC pursuant to this Subcontract.

“VEIC” has the meaning set forth in the first paragraph of this Subcontract.

Attachment B1

GENERAL SCOPE OF SERVICES AND PRICING PROVISIONS

GENERAL DESCRIPTION OF SERVICES

Retrofit services in a market-based model:

1. **Solicitation of Customers into Program and Site Assessments**

a. The DCSEU will assign potential projects to Subcontractor. The Subcontractor will use the information provided to contact potential customers and conduct an energy audit of the exterior and common area of the customer’s property. The completed energy audit will be sent to the DCSEU for review and pre-approval of the energy efficiency measures. If approved, the DCSEU will issue a Work Order to Subcontractor to complete the work. The Subcontractor will serve as the principal point of contact with the customer and will be responsible for scheduling a site assessment, per DCSEU program protocols.

b. The DCSEU will also accept potential projects from Subcontractor. The Subcontractor will provide the information used to conduct the energy audit of the exterior and common areas of the customer’s property. The completed energy audit will be sent to the DCSEU for review and pre-approval of the energy efficiency measures. If approved, the DCSEU will issue a Work Order to the Subcontractor to complete the work. The Subcontractor will serve as the principal point of contact with the customer and will be responsible for scheduling a site assessment, per DCSEU program protocols.

c. Upon receipt of the Work Order, Subcontractor shall complete the site assessment to determine which measures from the Work Order are eligible for retrofit according to the terms and conditions of the DCSEU program protocols and Work Order. Subcontractor shall notify the DCSEU of any variances between the measures eligible for retrofit and the Work Order so that the DCSEU can issue an Amendment to the Work Order.

2. **Marketing/Selling of offering to end-use clients**

a. The Subcontractor will be responsible for “selling” any potential upgrades to the end-use clients based on program protocols.

3. **Installation of Energy Efficient Measures**

a. Subcontractor shall install the energy efficiency measures as specified in the Work Order. The Subcontractor shall follow all DCSEU installation program protocols outlined in the Work Order and install the energy efficiency measures according to the manufacturer's specifications.

b. The Subcontractor shall submit to the DCSEU all "as built" program documentation using the forms provided by the DCSEU, per program protocols.

c. Subcontractor shall comply with all DCSEU program protocols including the DCSEU's dispute resolution protocols and protocols specifically relating to remediation efforts in a timely fashion.

Pricing

Pricing to the Subcontractor depends on specifics for each project. See individual work orders for pricing.

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Attachment B2

SAMPLE IQC WORK ORDER

Indefinite Quantity Subcontract (IQC) No:	DC-DC-18-XXXX
Subcontractor:	Subcontractor Name
Trade:	Trade
Work Order No:	DC-DC-18-XXXX-WOX
IQC MLA Value:	\$Subcontractor MLA Value
Value of this Work Order:	\$Value of this Work Order
Remaining IQC Subcontract:	\$Remaining Value of Subcontract after this WO
Date:	Month, Day, Year
Name of Customer(s) Served:	Customer Name
Site Location (if applicable)	Physical Address
Job Number:	Job Number
Cost Codes:	Cost Code
Work Order Manager:	Name of DCSEU WO Manager

SCOPE OF WORK:

Subcontractor shall provide the following services:

<Insert detailed Scope of Work. The scope of work in each Work Order shall include a complete and detailed description of the services the Subcontractor is required to perform to complete the Scope of Work.>

PRICING:

Subcontractor will be paid in accordance with the following provisions:

<Insert payment provisions (time and material/fixed fee/or per unit).

Notwithstanding the above, a Not-to-Exceed (NTE) amount for this Work Order has been established by the DCSEU based on the Subcontractor's cost estimate. Payment for the Scope of Work will be based on the actual measures installed, but in no event will payment exceed the NTE amount for this Work Order. The NTE amount for this Work Order is \$XXXX (Insert Written Dollar Amount). Subcontractor bears all risks for cost incurred by exceeding an NTE or MLA without negotiating and executing an amendment to the existing NTE or MLA before the cost overrun occurs.

SCHEDULE: (TERM OF WORK ORDER):

The Term of this Work Order shall commence on or after Month Day, Year and shall be completed on or before Month Day, Year with all necessary compliance and invoicing submitted on or before Month Day, Year unless the DCSEU extends these dates in writing by amending the Work Order.

QUALITY ASSURANCE:

<Delete for non-installation Work Orders>

Subcontractor shall notify the DCSEU upon completion of the installed measures to schedule a Quality Assurance/Quality Control (QA/QC) project inspection with the DCSEU. Subcontractor understands that inspections will only be scheduled once all the installed measures have been completed by Subcontractor. Subcontractor further understands and agrees that failure to complete the installed measures within the term of this Work Order and pass the QA/QC inspection may result in reassignment to another DCSEU subcontractor and/or termination of this Work Order. In cases of termination or reassignment, full financial and legal responsibility for any and all work performed, measures installed, and/or administrative time allocated toward the completion of this Work Order, shall be determined in accordance with the terms of DCSEU Indefinite Quantity Contract (IQC) No: **Insert Subcontract Number.**

COMPLIANCE:

For assistance with contracting and employment reporting contact the DCSEU at (202) 479-2222 or email info@dcseu.com. All subcontractors and subcontractor's subcontractors must agree to submit required compliance documentation for this Work Order in a timely manner, including the following.

1. Will this work order require you to use a subcontractor(s): yes: _____ no: _____
2. If no, enter in number (4) below projection of total hours and those dedicated as DC green job hours, required for this work order.
3. If yes, additional subcontractor(s) must be listed below:
 - a. Company name: _____ Trade: _____
 - b. Contact name: _____
 - c. Phone: _____ Email: _____
 - d. *CBE: yes ___ no ___ *SBE: yes _____ no _____
 - e. Value of subcontractor contract: _____
 - f. Projection of subcontractor total hours _____ and projections of DC green job hours _____ required for work order.
4. Total hours required for this work order: _____
 - a. Number of Subcontractor Hours: DC: _____ Non-DC: _____
 - b. Number of Subcontractor's subcontractor Hours:
 - i. DC: _____ Non-DC: _____

- c. TOTAL WORK ORDER HOURS: DC: _____ Non DC: _____
5. Have you reported the hours worked prior to this work order: Yes No
- a. Number of hours worked to schedule audit: DC: _____ Non-DC: _____
- b. Number of hours worked to complete the audit: DC: _____ Non-DC: _____
- c. Numbers of hours worked to submit audit: DC: _____ Non-DC: _____
- d. TOTAL AUDIT HOURS: DC _____ Non-DC _____

Definitions:

*Scheduling hours are defined as hours worked by Subcontractor to outreach/enroll/and coordinate the on-site assessment for energy efficiency opportunities.

**Completing on-site assessment hours are defined as time spent on conducting the on-site assessment, including travel time to/from the on-site assessment.

***Submitting on-site assessment hours are defined as hours worked to complete the DCSEU data collection/on-site assessment tools for approval.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

SIGNATURES:

ACCEPTED BY:

Insert Subcontractor's Name

By: _____

Printed Name: _____

Title: _____

APPROVED BY:

VERMONT ENERGY INVESTMENT CORPORATION

By: _____

Printed Name: _____

Title: _____

ATTACHMENT C

INVOICING AND PAYMENTS

Invoice Requirements

Subcontractor will submit monthly invoices of all agreed upon expenses and allowable costs in accordance with the Subcontract and VEIC-authorized Work Order(s). The invoice and supporting documentation are to be received at VEIC's principal offices by the 5th business day of the subsequent calendar month. This is defined as the "Cut-off Date". Invoices not received by the Cut-off Date will be delayed in payment until the following month.

If invoices are submitted by mail, one copy should be sent to:

Accounts Payable
Vermont Energy Investment Corporation
128 Lakeside Ave., Suite 401
Burlington, VT 05401

A second copy should be sent to the VEIC project manager as noted in Section 25 of the Subcontract.

If submitted via e-mail, invoices should be sent to AccountsPayable@veic.org and a copy to the VEIC project manager at the same time.

All invoices will, at a minimum, include:

- Subcontractor name
- Subcontractor address
- Project code and description
- Invoice number and date
- Subcontractor Federal Employer I.D. number (or Social security number if Subcontractor is an individual / sole proprietorship)
- Period covered by invoice
- Contract number and Work Order being billed in support
- Summary description of hours and reimbursable expenses
- Detailed hours and hourly rate, daily, by staff person, with VEIC project codes assigned and with District of Columbia Ward #, if a DC resident
- Detailed line item of reimbursable expenses, including description, quantity, price, purpose, services performed and date(s) of services. All reimbursable expenses (over \$10) must be accompanied by receipts and coded to the appropriate VEIC Project codes

- Name, title, telephone number, email and complete mailing address of responsible party to whom payment is to be sent
- Administrative contact name, phone number, and e-mail of preparer of invoice
- Name, title, telephone number, email and complete mailing address of person to be notified in event of a defective invoice
- Signature of the Subcontractor's Authorized Representative

NOTE: IF ANY OF THE LISTED ITEMS ARE MISSING, THE INVOICE WILL BE RETURNED AND NO PAYMENT WILL BE MADE UNTIL THE ITEMS ARE COMPLETED.

Subcontractor will cooperate with VEIC to develop an invoice format and requirements for implementation prior to the first invoice submitted under this Subcontract. VEIC may require modifications to the form of invoice during the Performance Period of this Subcontract. All labor and reimbursable expenses must be clearly itemized and coded to appropriate VEIC job and Project codes. Reimbursable expenses are subject to current GSA limits and per diems: <http://www.gsa.gov/portal/category/21287>.

Payments

Within 30 calendar days, excluding legal holidays, after receipt of a proper invoice from Subcontractor, VEIC will pay Subcontractor for services that have been completed in accordance with the requirements of this Subcontract including passing inspection by VEIC if the services are subject to such inspection. A "proper invoice" means an invoice that complies with the Invoice Requirements set forth above and that contains or is accompanied by substantiating documentation required by this Subcontract. For services that are subject to inspection by VEIC, VEIC will pay Subcontractor within 30 days of receipt of invoice unless VEIC performs an inspection and the Subcontractor's work fails the inspection. In the case of a failed inspection, the items on the invoice that passed inspection will be paid within 30 days, and invoice items that did not pass inspection will be paid after Subcontractor corrects the defects.

Expenditures shall not be reimbursable if they are not in conformity with guidance or rules prescribed by the Internal Revenue Service or the Office of Management and Budget.

VEIC will pay interest on late payments to Subcontractor as provided in subsection (b)(1) and (2) of DC Official Code §2-221.02.

This "Payments" subsection will not limit or impair any contractual, administrative, or judicial remedies otherwise available to Subcontractor in the event of a disputed payment, late payment or nonpayment by VEIC, or to VEIC in the event of deficient Subcontract performance or nonperformance by Subcontractor.

Flow-down requirements for lower-tier subcontractors

Subcontractor will include in its contracts with any lower-tier subcontractors or suppliers the payment and interest clauses from paragraphs (1) and (2) of DC Official Code §2-221.02(d).

ATTACHMENT E

FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: _____

Employer Name: _____

Project Contract Amount: _____

Employer Contract Award: _____

Project Name: _____

Project Address: _____

Ward: _____

Nonprofit Organization with 50 Employees or Less: _____ Yes _____ No

This First Source Employment Agreement, in accordance with The First Source Employment Agreement Act of 1984 (codified in D.C. Official Code §§ 2-219.01 – 2.219.05), The Apprenticeship Requirements Amendment Act of 2004 (Codified in D.C. Official Code §§ 2-219.03 and 32-1431) for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as “DOES”, and **[Insert the subcontractor name]**, hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for all new jobs created by the Project. The Employer will hire 51% District of Columbia residents for all new jobs created by the Project, and 35 % of all apprenticeship hours be worked by DC residents employed by EMPLOYER in connection with the Project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

I. GENERAL TERMS

- A. Subject to the terms and conditions set forth herein, the EMPLOYER will use DOES as its first source for the recruitment, referral and placement for jobs created by the Project.
- B. The EMPLOYER will require all Project contractors with contracts totaling \$300,000 or more, and Project subcontractors with subcontracts totaling \$300,000 or more, to enter into a First Source Employment Agreement with DOES.
- C. DOES will provide recruitment, referral and placement services to the EMPLOYER, which are subject to the limitations set out in this Agreement.
- D. The participation of DOES in this Agreement will be carried out by the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by the Office of the Director, of DOES.
- E. This Agreement will take effect when signed by the parties below and will be fully effective for the duration of the Project contract and any extensions or modification to the Project contract.

- F. This Agreement will not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/subcontract for the Project.
- G. DOES and the EMPLOYER agree that, for purposes of this Agreement, new hires and jobs created for the Project (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created for the Project as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.
- H. This Agreement includes apprentices as defined and as amended, in D.C. Law 2-156. D.C. Official Code §§ 32-1401- 1431.
- I. The EMPLOYER, prime subcontractors and subcontractors who contract with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least \$500,000, let within a 12-month period will be required to register an apprenticeship program with the District of Columbia Apprenticeship Council; and this includes but is not limited to, any construction or renovation contract or subcontract signed as the result of, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more. In furtherance of the foregoing, the EMPLOYER shall enter into an agreement with its contractors, including the general contractor, that requires that such contractors and subcontractors for the Project participate, in apprenticeship programs for the Project that: (i) meet the standards set forth in Chapter 11 of Title 7 of the District of Columbia Municipal Regulations, and (ii) have an apprenticeship program registered with the District of Columbia's Apprenticeship Council.

II. RECRUITMENT

- A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected to be created on the Project, salary range, hiring dates, residency status, ward information, new hire justification and union requirements.
- B. The Employer will post all job vacancies in the DOES' Virtual One-Stop (VOS) at www.jobs.dc.gov within five (5) days of executing the Agreement. Should you need assistance posting job vacancies, please contact Job Bank at (202) 698-6001.
- C. The EMPLOYER will notify DOES, by way of the First Source Office of its Specific Need for new employees for the Project, within at least five (5) business days (Monday - Friday) upon Employers identification of the Specific Need. This must be done before using any other referral source. Specific Needs shall include, at a minimum, the number of employees needed by job title, qualifications, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.
- D. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce do not need to be referred to DOES for placement and referral. However, EMPLOYER shall notify DOES of such promotions.

- E. The EMPLOYER will submit to DOES, prior to commencing work on the Project, the names, social security number, residency status and ward information of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project.

III. REFERRAL

- A. DOES will screen applicants and provide the EMPLOYER with a list of applicants according to the Notification of Specific Needs supplied by the EMPLOYER as set forth in Section II (B).
- B. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer.

IV. PLACEMENT

- A. The EMPLOYER will make all decisions on hiring new employees but will, in good faith, use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES.
- B. In the event that DOES is unable to refer qualified personnel meeting the Employer's established qualifications, within five (5) business days (Monday - Friday) from the date of notification, from the EMPLOYER, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for all new jobs created by the Project.
- C. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

V. TRAINING

- A. DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and will be set forth in a separate Training Agreement.

VI. CONTROLLING REGULATIONS AND LAWS

- A. To the extent that this Agreement is in conflict with any federal labor laws or governmental regulations, the federal laws or regulations shall prevail.
- B. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.
- C. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any collective bargaining unit involved with this Project a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

VII. EXEMPTIONS

- A. All contracts, subcontracts or other forms of government-assistance less than \$100,000.
- B. Employment openings the contractor will fill with individuals already employed by the company.
- C. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.
- D. Construction or renovation contracts or subcontracts in the District of Columbia totaling less than \$500,000 are exempt from the requirements of Section I(H) and I(I) of the General Terms hereof.
- E. Non-profit organization with 50 or less employees are exempt from the requirements.

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

- A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise this First Source Agreement shall remain in full force and effect and transferee shall remain subject to all provisions herein. In addition, the EMPLOYER as a condition of transfer shall:
 - 1. Notify the party taking possession of the existence of this EMPLOYER's First Source Employment Agreement.
 - 2. Notify DOES within seven (7) business days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.
- B. DOES will monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate with the DOES monitoring and will submit a Contract Compliance Form to DOES monthly.
- C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available to DOES, upon request, payroll and employment records for the review period indicated for the Project.
- D. The Employer will provide DOES additional information upon request.
- E. With the submission of the final request for payment from the District, the EMPLOYER shall:
 - 1. Document in a report to DOES its compliance with the requirement that 51% of the new employees hired by the EMPLOYER for the Project be District residents; or
 - 2. Submit to DOES a request for a waiver of compliance of the requirement that 51% of the new employees hired by the EMPLOYER the Project be District residents which will include the following documentation:
 - a. Documentation supporting EMPLOYER's good faith effort to comply;

- b. Referrals provided by DOES and other referral sources; and
 - c. Advertisement of job openings listed with DOES and other referral sources.
- F. The DOES may waive the requirement that 51% of the new employees hired by the EMPLOYER for the Project be District residents, if DOES finds that:
- 1. A good faith effort to comply is demonstrated by the EMPLOYER; or
 - 2. The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area:

The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
 - 3. the EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or
 - 4. DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project. No failure by Employer to request a waiver under any other provision hereunder shall be considered relevant to a requested waiver under this Subsection.
- G. Willful breach of the First Source Employment Agreement by the EMPLOYER, failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the DOES through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract for the positions created by EMPLOYER.
- H. The parties acknowledge that the provisions of E and F of Article VIII apply only to First Source hiring.
- I. Nonprofit organizations with 50 or less employees are exempt from the requirement that 51% of the new employees hired by the EMPLOYER on the Project be District residents.
 - J. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.
 - K. The EMPLOYER's noncompliance with the provisions of this Agreement may result in termination.

IX. LOCAL, SMALL, DISADVANTAGED BUSINESS ENTERPRISE

- A. Is your firm a certified Local, Small, Disadvantaged Business Enterprise (LSDBE)?

____ YES ____ NO

If yes, certification number: _____

X. APPRENTICESHIP PROGRAM

A. Do you have a registered Apprenticeship program with the D.C. Apprenticeship Council?

____ YES ____ NO

If yes, D.C. Apprenticeship Council Registration Number: _____

XI. SUBCONTRACTOR

A. Is your firm a subcontractor on this project?

____ YES ____ NO

If yes, name of prime contractor: _____

Dated this _____ day of _____ 20____.

Signature Dept. of Employment Services

Signature of Employer

Name of Company

Address

Telephone

E-mail

EMPLOYMENT PLAN

NAME OF EMPLOYER: _____

ADDRESS OF EMPLOYER: _____

TELEPHONE NUMBER: _____ FEDERAL IDENTIFICATION NO.: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TYPE OF BUSINESS: _____

DISTRICT CONTRACTING AGENCY: _____

CONTRACTING OFFICER: _____ TELEPHONE NUMBER: _____

TYPE OF PROJECT: _____ CONTRACT AMOUNT: _____

EMPLOYER CONTACT AMOUNT: _____

PROJECT START DATE: _____ PROJECT END DATE: _____

EMPLOYER START DATE: _____ EMPLOYER END DATE: _____

NEW JOB CREATION PROJECTIONS: Please indicate ALL new position(s) your firm will create as a result of the Project. If the firm WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

TITLE	# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A				
B				
C				
D				
E				
F				
G				
H				
I				
J				
K				

ATTACHMENT F

CONFLICT OF INTEREST STATEMENT

District of Columbia Sustainable Energy Utility Annual Conflict of Interest and Confidentiality Statements June 2011

Conflict of Interest

Employees of District of Columbia Sustainable Energy Utility (DCSEU) are expected to represent DCSEU in a positive and ethical manner at all times, and to refrain from any activities that compromise their ability to objectively represent DCSEU's best interests. To ensure that decisions about DCSEU policy, operations, procurement of good and services, and the use or disposition of DCSEU assets are made solely in terms of the benefits to DCSEU and for the purposes set forth in DCSEU's Articles of Association, employees are prohibited from engaging in activities, practices, or conduct which conflicts with, or appears to conflict with, DCSEU's interests. Employees who are uncertain about the appropriateness of a certain activity are encouraged to consult with their supervisor. Since it is impossible to describe all of the situations that may cause or give the appearance of a conflict of interest, specific prohibitions included in this policy are not intended to be exhaustive and include only some of the more clear examples:

- Staff may not accept any employment relationship with any organization that does business with, or competes with DCSEU, while employed by or serving DCSEU. This includes serving as an advisor, consultant, contractor or subcontractor to any organization of this type, unless the activity is conducted as an employee of DCSEU.
- Staff may not independently perform any of the types of services for fees that DCSEU provides for fees for any organization or individual while employed by DCSEU without prior approval from the Executive Director.
- Staff must disclose any financial interest (except incidental common stock ownership or participation in mutual funds) that they or their immediate family has in any company that does business with or competes with DCSEU, in any situation where that employee is in a position to make a decision that could pose a conflict or appearance of a conflict of interest. The purpose of such disclosure is to be able to evaluate the potential for conflict of interest. DCSEU may require the person to withdraw herself /himself from any decision where the financial interest could be considered to be in conflict with the best interests of DCSEU.
- Staff may not accept, give, offer, or promise, either directly or indirectly, any gifts valued at over \$100 to any representative of a customer, a potential customer, or a financial institution in connection with any transaction or business that DCSEU may have with that customer, a potential customer, or a financial institution. Any gifts valued at over \$100 that are received by an employee must be turned over to the Executive Director.

If a potential conflict of interest is identified by a staff member, the Executive Director must be notified in writing and will make a determination of the appropriate response and any action to be taken.

Staff must also disclose on an annual basis any additional interests such as a list of family members, substantial business or investment holdings and other transactions or affiliations with businesses or organizations that might be related to DCSEU's interests.

In addition, DCSEU's auditors will periodically review any potential excess benefit transactions as well as compensation arrangements, partnerships, joint ventures, and any other arrangements with management organizations to prevent inurement, impermissible private benefit, or an excess benefit transaction.

Check **one** of the following and sign:

By signing this document I attest that I have read and understand the DCSEU Conflict of Interest Policy, I agree to abide by its provisions, and I do not have any Conflict of Interest situations.

By signing this document I attest that I have read and understand the DCSEU Conflict of Interest Policy, I agree to abide by its provisions, and I am reporting the following relationships and interests related to DCSEU's business:

[INSERT THE SUBCONTRACTOR NAME]

Signature: _____

Print Name: _____

Date: _____

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ATTACHMENT G

SPECIAL REQUIREMENTS

- A. LIVING WAGE RATE.** Subcontractor will pay its employees and subcontractors who perform services under this Subcontract not less than the current living wage published on the Office of Contracting and Procurement (“OCP”) website at www.ocp.dc.gov.
- B. FACT SHEET; NOTICE.** Subcontractor will provide a copy of the Fact Sheet referenced at <http://ocp.dc.gov/sites/default/files/dc/sites/ocp/publication/attachments/LIVING%20WAGE%20ACT%20FACT%20SHEET2%202016.pdf> to each employee and subcontractor who performs services under this Subcontract. If this Subcontract is for \$15,000 or more, Subcontractor will post in a conspicuous place in its place of business the Way to Work Amendment Act of 2006 – Living Wage Notice: <http://does.dc.gov/page/living-wage-act-2016-notice>.
- C. PAYROLL RECORDS MAINTENANCE.** Subcontractor will maintain its Certified Payroll Records under the Subcontract in the regular course of business for a period of at least three (3) years from the payroll date, and will include this requirement in its subcontracts under this Subcontract.
- D. RIGHTS OF EXAMINATION.** If this Subcontract is for \$100,000 or more, and (a) is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type of contract or any combination of these; (b) requires cost or pricing data; or (c) requires Subcontractor to furnish reports as required of VEIC in the Prime Contract; Subcontractor will comply with the provisions contained in this clause:
1. Records. As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
 2. Examination of Costs. Subcontractor will maintain and VEIC, or an authorized representative of VEIC, will have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Subcontract. This right of examination will include inspection at all reasonable times of Subcontractor’s plants, or parts of them, engaged in performing this Subcontract.
 3. Examination of Transaction Records. The CO, the Inspector General and the District of Columbia Auditor, VEIC or any of their duly authorized representatives, will have access to and the right to examine any of Subcontractor’s directly pertinent records involving transactions related to this Subcontract or a subcontract hereunder. This paragraph may not be construed to require Subcontractor to create

or maintain any record that Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

4. Reports. If Subcontractor is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO, or VEIC will have the right to examine and audit the supporting records and materials, for the purpose of evaluating the effectiveness of Subcontractor's policies and procedures to produce data compatible with the objectives of these reports, and the data reported.
5. Availability. Subcontractor will make available to DOEE at its office or VEIC at all reasonable times the records, materials, and other evidence described in Sections 4(A) through 4(E), for examination, audit, or reproduction, until three (3) years after final payment under this Subcontract, or for any longer period required by statute or by other clauses of this Subcontract. In addition:
 - (a) Post-Termination. If this Subcontract is completely or partially terminated, Subcontractor will make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - (b) Litigation. Subcontractor will make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
6. Subcontractor shall insert a clause containing all the terms of this Section 4, including this subsection 4.F, in all its subcontracts under this Subcontract that exceed the small purchase threshold of One Hundred Thousand Dollars (\$100,000), and:
 - (a) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (b) For which cost or pricing data are required; or
 - (c) That requires the Subcontractor's subcontractor to furnish reports as discussed in subsection 4.D.

E. NO STATEMENTS. Subcontractor shall at all times obtain prior approval from VEIC and the CA before it, any of its officers, agents, employees or subcontractors, makes any statement that may reflect on DOEE or the District government, or states or implies it is speaking on behalf of DOEE or the District. Subcontractor shall at all times inform VEIC and the CA 48 hours in advance before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of this Subcontract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this Subcontract.

F. FOIA. The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If Subcontractor receives a request for such information, Subcontractor will immediately send the request to the CA who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by Subcontractor pursuant to the contract, the CA will forward a copy to Subcontractor. In either event, Subcontractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the release-ability of the records.

G. DC HUMAN RIGHTS ACT.

§ 2-1402.01. General. Every individual will have an equal opportunity to participate fully in the economic, cultural and intellectual life of the District and to have an equal opportunity to participate in all aspects of life, including, but not limited to, in employment, in places of public accommodation, resort or amusement, in educational institutions, in public service, and in housing and commercial space accommodations.

§ 2-1402.11. Prohibitions. General. It will be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation of any individual.

H. AMERICANS WITH DISABILITIES ACT OF 1990 (ADA). During the performance of this Subcontract, Subcontractor will comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 et seq.

I. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED. During the performance of this Subcontract, Subcontractor will comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded programs and activities. See 29 U.S.C. § 794 et seq.

J. NON DISCRIMINATION CLAUSE.

1. The Subcontractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D. C. Law 2-38; D. C. Official Code §2-1402.11) (2001 Ed.) (“Act” as used in this Section). The Subcontractor shall include a similar clause in all subcontracts, except

subcontracts for standard commercial supplies or raw materials. In addition, Subcontractor agrees and all of Subcontractor's subcontractors shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

2. Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register, Mayor's Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor's Order 2006-151 (11/17/06), 52 DCR 9351, the following clauses apply to this Subcontract:
 - (a) The Subcontractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
 - (b) The Subcontractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. The affirmative action shall include, but not be limited to the following:
 - i. employment, upgrading or transfer;
 - ii. recruitment, or recruitment advertising;
 - iii. demotion, layoff, or termination;
 - iv. rates of pay, or other forms of compensation; and
 - v. selection for training and apprenticeship.
 - vi.
3. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections 10(b)(1) and (b)(2) concerning non-discrimination and affirmative action.
4. The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection 10(b)(2).

5. The Subcontractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Subcontractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
6. The Subcontractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.
7. The Subcontractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.
8. The Subcontractor shall include in every subcontract the equal opportunity clauses, subsections 10(b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor vendor.
9. The Subcontractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Subcontractor may request the District to enter into such litigation to protect the interest of the District.

- K. DC LANGUAGE ACCESS ACT OF 2004.** For any customers with limited or no-English proficiency to whom Subcontractor provides services, Subcontractor will inform the Project Manager of the customer's name and contact information. If directed by VEIC, Subcontractor will provide written materials to such customers informing them of the opportunity to obtain language assistance services; all such written materials will be supplied to Subcontractor by VEIC.
- L. NATIONAL HISTORIC PRESERVATION ACT.** Subcontractor must comply with the requirement of the National Historic Preservation Act (Section 106) by cooperating with VEIC in obtaining a written concurrence of no objection from the State Historic Preservation Officer of the District prior to conducting any work on a property that is listed in or eligible for listing in the National Register of Historic Places.
- M. OCCUPATIONAL HEALTH AND SAFETY ACT OF 1970.** During the performance of this Subcontract, Subcontractor will comply with all applicable requirements of the Occupational Health and Safety Act of 1970, as amended, including, but not limited to, the provisions of 29 CFR §1926 regarding lead paint.
- N. BUY AMERICAN ACT.**

1. The Buy American Act (41 U.S.C. §10a) provides that the District give preference to domestic end products.

“Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” as used in this clause, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

2. The Contractor shall deliver only domestic end products, except those-

- (a) For use outside the United States;

- (b) That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

- (c) For which the District determines that domestic preference would be inconsistent with the public interest; or

- (d) For which the District determines the cost to be unreasonable.

O. SERVICE CONTRACT ACT OF 1965.

- (a) Definitions. “Act,” as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.*).

- (1) “Contractor,” as used in this clause, means the prime Contractor or any subcontractor at any tier.

- (2) “Service employee,” as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a District contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish

services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.

(b) Applicability. To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.

(2) If a wage determination is attached to this contract,¹ the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.

(a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the

¹ The following attachment is incorporated into the contract by reference: U.S. Department of Labor Wage Determination No. 2015-4281 Revision No. 4, dated December 30, 2016.

Contracting Officer within 30 days of receipt that additional time is necessary;

(b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;

(c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;

(d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;

(e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;

(g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.

(4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.

(d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.

(e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:

(1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or

(2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the

predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.

(h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:

(1) For each employee subject to the Act:

(a) Name and address;

(b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(c) Daily and weekly hours worked; and

(d) Any deductions, rebates, or refunds from total daily or weekly compensation.

(2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.

(3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) Pay periods: The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) Withholding of payments and termination of contract: The Contracting Officer shall withhold from the prime Contractor under this or any other District contract with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the District may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.

(l) Contractor's report:

(1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid

and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.

(2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

(n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

(1) (i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

(ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

(iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

P. 16. PREGNANT WORKERS FAIRNESS.

- A. The Subcontractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 et seq. (PPWF Act).
- B. The Subcontractor shall not:
 - 1. Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Subcontractor can demonstrate that the accommodation would impose an undue hardship;
 - 2. Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:
 - 1. Pay;
 - 2. Accumulated seniority and retirement;
 - 3. Benefits; and
 - 4. Other applicable service credits.
 - 3. Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;
 - 4. Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

5. Require an employee to take leave if a reasonable accommodation can be provided; or
 6. Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.
1. The Subcontractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to this chapter to:
 - 1) New employees at the commencement of employment;
 - 2) Existing employees; and
 - 3) An employee who notifies the employer of her pregnancy, or other condition covered by this chapter, within 10 days of the notification.
 2. The Subcontractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.
 3. Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

17. UNEMPLOYED ANTI-DISCRIMINATION.

- A. The Subcontractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*
- B. The Subcontractor shall not:
 1. Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
 2. Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:
 - i. Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
 - ii. Any provision stating or indicating that an employment agency will not

consider or hire an individual for employment based on that individual's status as unemployed.

C. Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

18. FAIR CRIMINAL RECORD SCREENING.

1. The Subcontractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the "Act" as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.
2. Prior to making a conditional offer of employment, the Subcontractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Subcontractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.
3. After making a conditional offer of employment, the Subcontractor may require an applicant to disclose or reveal a criminal conviction.
4. The Subcontractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.
5. This section and the provisions of the Act shall not apply:
 1. Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;
 2. To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;
 3. To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or
 4. To employers that employ less than 11 employees.

5. A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Subcontractor.

DRAFT



DISTRICT OF COLUMBIA SUSTAINABLE ENERGY UTILITY

DC SUSTAINABLE ENERGY UTILITY PROJECT

DATE OF HIRE	DATE OF DEPARTURE	EMPLOYEE NAME	LAST 4 OF SSN	ADDRESS	CITY AND STATE	ZIP CODE	HOURLY RATE OF PAY	DC WARD (IF APPLICABLE)	DESCRIPTION OF JOB

80 M Street SE, Suite 310, Washington, DC 20003 • www.dcseu.com
Phone: 202-479-2222 • Toll-free: 855-MY-DCSEU/ 855-693-2738 • Fax: 202-450-1552

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.



U.S. Wage and Hour Division
Rev. Dec. 2008

OMB No.: 1215-0149
Expires: 12/31/2011

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	
PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION
		PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	DT. OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK	
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS			
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

ATTACHMENT H

DAVIS-BACON AND RELATED ACTS, PROVISIONS AND PROCEDURES

CFR Title 29: Labor

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

§ 5.5 Contract provisions and related matters.

(a) The SEU Contractor shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or

owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees* —(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that

determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its

subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The SEU contractor shall insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b) (1) through (4) of this section.

ATTACHMENT I

DISTRICT OF COLUMBIA SUSTAINABLE ENERGY UTILITY GENERAL CONFIDENTIALITY GUIDELINES MEMO

The Vermont Energy Investment Corporation (VEIC) operates District of Columbia Sustainable Energy Utility (DCSEU) on behalf of District of Columbia Department of the Environment. In carrying out these duties VEIC and its subcontractors will have access to and receive large amounts of data from the utilities and other sources. Most of this data is Confidential Information as defined below. VEIC has established the Confidential Information Management System (“CIMS”) to ensure that there are procedures in place to ensure the proper handling of DCSEU’s confidential information.

The basic underlying principle for all DCSEU Confidential Information is that it is to be used by VEIC and subcontractor staff only for the purposes of implementing DCSEU energy efficiency services. Thus, no Confidential Information should be made available to the public or provided to any VEIC or subcontractor staff who will not be using the Confidential Information for DCSEU purposes.

This memo provides procedures and guidelines for the handling of DCSEU confidential information by VEIC staff and subcontractors.

The CIMS Coordinator

VEIC has established the position of “CIMS Coordinator” to maintain the adequacy of current procedures and guidelines to assure that the contractual obligations with respect to the handling of Confidential Information are met.

Specifically the CIMS Coordinator is responsible for:

1. Ensuring that all VEIC Employees, all DCSEU Subcontractor staff and any other individuals who have access to the Confidential Information have read and understand the General Confidentiality Guidelines Memo prior to gaining access to the Confidential Information. The memo will be provided prior to the granting of access to the Confidential Information.
2. Ensuring that all VEIC Employees, all DCSEU Subcontractor staff and any other individuals who have access to Confidential Information have signed the protective agreement. The CIMS Coordinator will ensure that each individual understands their obligations as detailed in the protective agreement. The protective agreement shall be signed prior to the granting of access to the Confidential Information.
3. Determining whether or not a party requesting access to Confidential Information is actually providing DCSEU services and will use such Confidential Information strictly for DCSEU purposes.
4. Determining whether or not data or any particular item of information is or is not Confidential Information as defined above.
5. Conducting investigations into any alleged compromises, incidents and/or problems regarding Confidential Information, and reporting the results of such investigations to the DCSEU Senior Management Team.

6. If the results of such investigations determine that Confidential Information was actually improperly released, the CIMS Coordinator will immediately notify the District of Columbia Sustainable Energy Utility Contractor Administrator. All prudent steps will be taken to ensure that no further Confidential Information is improperly disclosed. All prudent steps will be taken to retrieve such Confidential Information from the unauthorized receiving party.
7. Ensuring that all new VEIC and DCSEU subcontractor staff are provided with adequate training such that they fully understand the CIMS procedures and guidelines.
8. Revising or modifying CIMS procedures as deemed necessary to ensure the continued safeguard of Confidential Information. The CIMS Coordinator will obtain approval of the DCSEU Senior Management Team and District of Columbia Sustainable Energy Utility Contractor Administrator prior to implementing any CIMS modifications.
9. Providing VEIC and DCSEU subcontractor staff with training on any CIMS modifications and as needed refresher training regarding the operation of CIMS.

Confidential Information

Confidential Information consists of (1) customer-specific information, or (2) competitively sensitive information. Confidential Information is not restricted in format. It can be any material containing data meeting the definitions below, including without limitation, written or printed documents, electronic data, drawings, schematics, or any other tangible item.

Customer Specific Information

"Customer-specific information" is defined as any information which specifically identifies a single customer using one or more unique references including, but not limited to, customer name, mailing address, phone numbers, e-mail addresses, and designations of physical location, electric utility usage data or electric utility account numbers. Generally, customer-specific information will be un-aggregated. However, if it is possible to ascertain customer-specific information from a collection of aggregated data then such aggregated data will be considered confidential. For example if a collection of data by municipality allowed one to determine information about a specific customer because there was clearly only one customer in a particular municipality then that data should be treated as confidential information.

Competitively Sensitive Information

"Competitively-sensitive information" is defined as information that "could provide an unfair competitive advantage to an entity delivering services outside of the energy efficiency services approved by the District of Columbia Department of the Environment for DCSEU implementation". The intent is to ensure that no information (either customer specific, aggregated customer data or market related data) is provided to any entity such that the entity would have an unfair advantage in providing non-DCSEU energy efficiency services over any other entities in its market. For example providing a particular HVAC contractor with data about the commercial new construction market could give that contractor an advantage over other HVAC contractors. The only information the HVAC contractor should have access to are data related to the specific customer to whom it was providing DCSEU energy efficiency services. Other examples of competitively sensitive market data may include, but is not limited to, customer surveys, aggregated sales data, load research and appliance saturation data.

Procedures for VEIC Employees and Subcontractor Staff

1. All VEIC Employees and all DCSEU Subcontractor staff and other individuals will, prior to receiving any Confidential Information, be provided with this “General Confidentiality Guidelines Memo.”

VEIC and Subcontractor staff will also sign the attached protective agreement prior to gaining access to Confidential Information. The attached protective agreement states that they will access, use, or disclose to any other person, Confidential Information only for the purposes of implementing DCSEU energy efficiency services.

2. VEIC and Subcontractor staff will deny all requests for Confidential Information from any and all parties that are not providing DCSEU services. If there is any question as to whether or not the requesting party will be using the Confidential Information to provide DCSEU services, then this request will be referred to the CIMS Coordinator. If there is any question as to whether or not the information being requested is Confidential Information as defined above, such request will also be referred to the CIMS Coordinator.
3. VEIC and Subcontractor staff will verify with the CIMS Coordinator that any party that is authorized to receive Confidential Information has received a copy of the General Confidentiality Guidelines Memo and has signed the protective agreement prior to releasing any Confidential Information to such a party.
4. VEIC staff that are providing non-DCSEU services will not use any Confidential Information in providing these non-DCSEU services.
5. VEIC staff will ensure that any visitors to VEIC’s offices are not allowed access to any Confidential Information unless they are specifically authorized in accordance with these procedures.
6. All paper copies of Confidential Information that are being disposed of will first be shredded.
7. Any customer specific DCSEU project information that is used in any DCSEU promotional or marketing materials will not disclose the name, address or specific location of such customer. In addition specific permission to use customer specific DCSEU project information will be obtained directly from the customer prior to using this information.
8. VEIC and DCSEU subcontractor staff provided with a VEIC Computer Network Login to access VEIC’s computer network will adhere to the following password provisions:
 - Password must be seven characters in length or greater
 - They must contain any 2 of the following (alpha, numeric, capitalization, characters)
 - They must not be a dictionary word or include personal names
9. Portable, laptop, notebook, personal data assistants, tablet computers, smart phones and other transportable computers containing Confidential Information, must not be left unsecured at any time.
10. The CIMS Coordinator must be notified immediately when:

- Any materials or equipment containing or suspected of containing Confidential Information is lost, disclosed to unauthorized parties, or suspected of being lost or disclosed to unauthorized parties.
- Unauthorized use of DCSEU’s information systems has taken place, or is suspected of taking place.
- Network Logins and or passwords are lost, stolen, or disclosed, or are suspected of being lost, stolen, or disclosed.
- Any other problems or concerns regarding DCSEU’s Confidential Information Management Systems.

By executing this Memo, the undersigned agrees that due to the unique nature of the Confidential Information, any breach of this Memo and the procedures stated herein would cause irreparable harm for which damages are not an adequate remedy and that the party owning the Confidential Information, any party harmed by the disclosure of the Confidential Information and/or VEIC will be entitled to equitable relief, in addition to all other remedies available at law.

If further clarification or additional assistance is needed, please contact VEIC’s CIMS Coordinator by email: cimscoordinator@veic.org.

Please sign on the line below, indicating that you have read and understand this Memo; and acknowledging that you are required to abide by the procedures detailed in this Memo.

[Insert the subcontractor name]

By: _____

Name: _____

Title: _____

Email: _____

Date: _____

PROTECTIVE AGREEMENT

This PROTECTIVE AGREEMENT is made by and between the Vermont Energy Investment Corporation (“VEIC”) which operates the District of Columbia Sustainable Energy Utility (“DCSEU”), and [Insert the subcontractor name] (the “Recipient”), effective as of the [Insert the effective day] of [Insert the effective month and year].

In accordance with the DCSEU General Confidentiality Guidelines Memo, the parties hereto agree as follows:

1. **Confidential Information and Materials**

- a. “Confidential Information” means information from any source whatsoever that is “customer-specific” or “competitively sensitive” as defined below that is received by Recipient or his/her employees, consultants, affiliates or related parties in connection with Recipient fulfilling his/her obligations and duties to VEIC and the DCSEU. Confidential Information is not restricted in format, and includes, without limitation, written or printed documents, electronic data, drawings, schematics, any other tangible item, and information that is communicated orally or visually.
- b. “Customer-specific information” is defined as any information which specifically identifies a single DCSEU customer using one or more unique references including, but not limited to, customer name, mailing address, phone numbers or e-mail addresses, designations of physical location, utility usage data or utility account numbers. Generally, customer-specific information will be un-aggregated. However, if it is possible to ascertain customer-specific information from a collection of aggregated data then such aggregated data shall be considered confidential.
- c. “Competitively-sensitive information” is defined as information that could provide an unfair competitive advantage to an entity delivering services outside of the energy efficiency services delivered by DCSEU. The intent is to ensure that no information (including, but not limited to, customer specific data, aggregated customer data or market related data) is provided to any entity such that the entity would have an unfair advantage in providing non-DCSEU energy efficiency services over any other entities.
- d. “Confidential Information” shall not include any materials or information which (i) is at the time of disclosure generally known by or available to the public or became so known or available thereafter through no act or omission of the Recipient; or (ii) is known to the Recipient and was not Confidential Information at the time of its original disclosure to the Recipient.

2. **Restrictions**

- a. The Recipient shall not disclose any Confidential Information to third parties unless VEIC has signed a non-disclosure agreement substantially similar to this Agreement with such third parties. Furthermore, the Recipient shall not disclose any Confidential Information to any third parties unless such disclosure is reasonably related to the Recipient’s exercise of his/her obligations and duties to VEIC and the DCSEU, and unless VEIC has specifically authorized such disclosure. Notwithstanding the above, the Recipient may disclose Confidential Information in accordance with judicial or

other governmental orders, provided the Recipient shall give VEIC reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent.

- b. The Recipient, and his/her assigns, shall not use any Confidential Information for any purposes except those consistent with the Recipient's fulfillment of his/her obligations and duties to VEIC and the DCSEU.
- c. The Recipient, and his/her assigns, shall take reasonable security precautions, which shall in any event be as great as the precautions it takes to protect the Recipient's own confidential information, to keep confidential the Confidential Information. The Recipient may disclose Confidential Information to his/her employees, consultants, affiliates or related parties only on a need-to-know basis, and only if such person has signed a protective agreement containing confidentiality obligations at least as restrictive as those contained herein. The Recipient shall instruct all of his/her employees, consultants, affiliates or related parties who have access to the information to maintain its confidentiality and to refrain from making unauthorized copies.
- d. The Recipient, and his/her assigns, employees, consultants, affiliates or related parties, who receive, or have access to, Confidential Information shall abide by and comply with the internal operating guidelines developed by VEIC regarding confidentiality as required by the DCSEU and the District, and any other confidentiality related directives which VEIC may promulgate from time to time.

3. **Rights and Remedies**

- a. The Recipient shall notify VEIC immediately upon discovery of any unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement by the Recipient or his/her assigns, employees, consultants, affiliates or related parties, and will cooperate with VEIC in every reasonable way to help regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.
- b. Any willful or deliberate disclosure or unauthorized use of Confidential Information with the clear intent of violating this Protective Agreement by Recipient is grounds for immediate default termination.
- c. The Recipient understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause VEIC irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that VEIC shall have the right to apply to a tribunal of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as VEIC may request. Such rights shall be in addition to remedies otherwise available to VEIC at law or in equity.

4. **Miscellaneous**

- a. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties.

- b. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of VEIC or their agents, or employees, unless such waiver is in writing signed by VEIC. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Failure of either party to enforce any provision of this Agreement shall not constitute waiver of such provision or any other provisions of this Agreement.
- c. If any action at law or in equity is necessary to enforce or interpret the rights or obligations arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.
- d. This Agreement shall be construed and governed by the laws of the District of Columbia, and both parties further consent to jurisdiction by courts located in the District.
- e. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. Should any of the obligations of this Agreement be found illegal or unenforceable as being too broad with respect to the duration, scope or subject matter thereof, such obligations shall be deemed and construed to be reduced to the maximum duration, scope or subject matter allowable by law.
- f. If the Recipient is an organization that employs more than one individual then this agreement shall be strictly adhered to by all individuals, subcontractors and consultants employed by such organization that have access to Confidential Information.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the date first set forth above.

**[INSERT THE SUBCONTRACTOR
NAME]**

**VERMONT ENERGY INVESTMENT
CORPORATION**

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

ATTACHMENT J

RIGHTS IN DATA

1. “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
2. The term “Technical Data,” as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.
3. The term “Computer Software,” as used herein, means computer programs and computer databases. “Computer Programs,” as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. “Computer Programs” include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
4. The term “computer databases,” as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
5. All data first produced in the performance of this Contract will be the sole property of the District. Subcontractor hereby acknowledges that all data, including, without limitation, computer program codes produced by Subcontractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Subcontractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. Subcontractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. Subcontractor agrees not to assert any rights in common law or in equity in such data. Subcontractor will not

publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

6. The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights will include, as a minimum the right to:
 - 6.1 Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;
 - 6.2 Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;
 - 6.3 Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions will remain subject to these restrictions.
7. The restricted rights set forth in paragraph 6 are of no effect unless
 - (i) the data is marked by Subcontractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Subcontract No. DC-DC-[Insert the two-digit fiscal year]-[Insert the subcontract number] with [Insert the subcontractor name] and VEIC.

and

- (ii) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. Subcontractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of this Subcontract prior to the delivery date of the software. Failure of Subcontractor to apply a restricted rights legend to such computer software will relieve the District of liability with respect to such unmarked software.
8. In addition to the rights granted in paragraph 6 above, Subcontractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in paragraph 6 above, under any copyright owned by Subcontractor, in any work of authorship prepared for or acquired by the District under this

contract. Unless written approval of the Contracting Officer is obtained, Subcontractor will not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by Subcontractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

9. Whenever any data, including computer software, are to be obtained from a subcontractor under this Subcontract, Subcontractor will use the terms of this **Attachment J, Rights in Data**, in the subcontract, without alteration, and no other clause will be used to enlarge or diminish the District's or Subcontractor's rights in that subcontractor data or computer software which is required for the District.
10. For all computer software furnished to the District with the rights specified in paragraph 5, Subcontractor will furnish to the District, a copy of the source code with such rights of the scope specified in paragraph 5. For all computer software furnished to the District with the restricted rights specified in paragraph 6, the District, if Subcontractor, either directly or through a successor or affiliate will cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Subcontractor should be declared bankrupt or insolvent by a court of competent jurisdiction, will have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.
11. Notwithstanding any additional indemnification provisions contained in the contract, Subcontractor will indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
12. Nothing contained in this clause will imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.
13. Paragraphs 6, 7, 8, 11 and 12 above are not applicable to material furnished to Subcontractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by Subcontractor at the time of delivery of such work.