Request for Proposals for Marketing Services

Proposal Deadline: 5:00pm EDT, Thursday, October 4, 2012

Efficiency Smart™, a provider of energy efficiency services to public power communities that are members of American Municipal Power, Inc. (AMP), requests proposals for comprehensive marketing services to be completed and presented to VEIC by 5:00pm on Thursday, October 4, 2012.

Questions regarding this RFP should be directed to choover@veic.org no later than 5:00pm EDT on Friday, September 21, 2012. Responses to all questions will be posted to the Efficiency Smart website (www.efficiencysmart.org) within five business days.

Electronic submissions of the proposals are preferred and should be submitted to choover@veic.org with “RFP Submission for Marketing Services” in the subject line. If submitting a hardcopy proposal, 2 copies must be delivered by the proposal deadline to Efficiency Smart, 1111 Schrock Road, Suite 203, Columbus, OH 43229.

Summary
With this Request for Proposal (RFP), Efficiency Smart seeks to acquire the services of a qualified local marketing/advertising firm to support its marketing initiatives. Efficiency Smart invites proposals from interested marketing/advertising agencies with experience in brand development and management; advertising; marketing; media planning and management; social media strategy, implementation, and management; website design and development; and market research. Preference will be given to agencies providing a broad range of services; subcontracts with local providers are acceptable.

Bidders must follow exactly, and be responsive to, ALL requirements of this RFP. It is the bidder’s responsibility to provide all specified materials in the required form and format. Responses that are not in the required form and format will not be considered.

The work to be performed will support reductions in energy use within the Efficiency Smart service area. The contract period will be from October 15, 2012, through December 30, 2013. Based on performance, the contract might be extended on a no-bid basis. Details pertaining to a contract extension are to be determined.

Background
Efficiency Smart brings the benefits of energy efficiency to municipal electric systems and their customers to help them reduce the cost of making energy-efficient improvements. Efficiency Smart services include rebates for energy-efficient residential products; free removal of old, inefficient refrigerators and freezers from homes; and rebates for more than 90 energy-efficient products and services for businesses. Efficiency Smart also offers technical assistance, account management services, and customized financial incentives for large commercial and industrial customers.

Efficiency Smart was established by AMP for the benefit of its member communities and is administered under contract with the Vermont Energy Investment Corporation. Operations are based in Columbus, Ohio.

Protocols for Preparing and Delivering Responses to this RFP
Responses to this RFP must be delivered electronically to the Efficiency Smart by 5:00pm EDT on Thursday, October 4, 2012. Responses submitted after 5:00 pm EDT will not be accepted. Responses must be submitted electronically via email to: choover@veic.org with “RFP Submission for Marketing Services” in the subject line. Submissions should
Scope of Work
The scope of work may include the following:

**Branding**
- Develop a brand platform including positioning, personality, promise, differentiation, and value proposition.
- Review the brand identity including naming, logo design, brand identity standards / guidelines / systems as appropriate.

**Marketing and Advertising**
- Provide graphic design and content development for digital, video, print, and collateral material, as requested.
- Provide strategic campaign support, including planning, development, and execution; multi-channel outreach; branded material development; media planning; and scheduling and purchasing of advertising. Advertising channels can include print, digital, radio, and television.
- Provide market strategy and market research consulting, as needed.
- Provide media planning and management, as needed.

**Digital**
- Provide website design, development, and content services, as needed.
- Provide social media strategy development, content, and execution, as needed.

**Market Research**
Conduct market research with residential electric utility customers served by American Municipal Power (AMP) in order to:
- Determine similarities/differences in customer satisfaction and energy efficiency awareness among Efficiency Smart participating utilities and non-participating utilities
- Better understand residential customer awareness of, attitudes toward and behavior in relation to energy and energy efficiency
- Identify barriers and motivators to taking energy efficiency actions
- Determine what AMP customers need and want with regard to energy and energy efficiency
- Identify how Efficiency Smart can best serve the identified needs/wants of AMP residential customers
- Identify most effective messages, messengers and media channels to reach and motivate residents in participating Efficiency Smart territories to engage in energy efficiency actions
Response Requirements (minimum requirements)

For ease and efficiency of review, Efficiency Smart has specified the numbering protocol below for bidders. Please follow this numbering protocol exactly, and do not re-number, insert numbers, or otherwise modify the sequence. Responses that do not follow this numbering order will not be considered.

1. Company profile
   a. Name of the business, contact person, and contact information: Provide address, telephone, mobile telephone number, fax number, e-mail address, and web address, as applicable.
   b. Statement of ownership: Describe the type of business entity (sole proprietorship, corporation, LLC, or other), and list the majority and minority owners.
   c. List of subcontractors. If applicable, provide company name, contact person, address, and telephone number, and intended percentage of work to be performed by any subcontractor.

2. Qualifications
   a. Provide a brief description of your firm, including its founding and history; number of employees; service areas; and, awards or other forms of recognition.
   b. Provide a description of your work process.
   c. Special consideration: Describe the experience with and knowledge of the Ohio, Michigan and Pennsylvania media market among your firm’s personnel, in the context of their careers.
   d. Special consideration: Describe the experience with and knowledge of the energy efficiency industry among your firm’s personnel, in the context of their careers.

3. Experience and ability to perform this work
   a. Provide examples of relevant work and / or case studies.
   b. Provide a minimum of three (3) client references.
   c. Provide a list of personnel who would be assigned to Efficiency Smart work, along with their credentials and experience.

4. Pricing
   a. Provide a current fee schedule.

Please follow exactly the requirements for the responses noted above. It is the responsibility of the bidders to provide all required materials in the required form and format. Responses that are not in the required form and format will not be considered.

Responses to this RFP must be delivered electronically to the Efficiency Smart by 5:00pm EDT on Thursday, October 4, 2012. Responses submitted after 5:00pm EDT will not be accepted. Responses must be submitted electronically via email to: choover@veic.org with “RFP Submission for Marketing Services” in the subject line.

Evaluation Criteria

Proposal will be evaluated on a 100 point scale as indicated below:

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Questions
Individual questions regarding this RFP will be responded to only as follows: Questions regarding requirements and scope of work will be accepted up to 5:00pm EDT Friday, September 21, 2012 via email only, at choover@veic.org. Answers to all questions received by this deadline will be posted on the Efficiency Smart website (www.efficiencysmart.org) within 5 business days, for viewing by all bidders. Telephone calls, faxes and/or requests for a solicitation will not be accepted or acknowledged.

Award
Efficiency Smart reserves the right to determine the timing of the start of any work described above, to not proceed with some or all of the work, and to contract with more than one vendor for services described within this RFP. Efficiency Smart reserves the right not to award a contract for this RFP, and will not reimburse the cost incurred by bidders who respond to this notice.

Contracting Office
Efficiency Smart
1111 Schrock Road
Suite 203
Columbus, OH 43229
choover@veic.org
www.efficiencysmart.com
Sample Subcontract

VEIC ES Subcontract Number: ___________  Subcontractor-Efficiency Smart

This agreement (hereinafter called “Subcontract”) dated this ____ day of ____, 20__ is between the Vermont Energy Investment Corporation (VEIC) and (Subcontractor).

WHEREAS, VEIC entered into a Contract (the Prime Contract) with American Municipal Power (AMP) to carry out the duties of the Efficiency Smart;

WHEREAS, VEIC desires to employ a subcontractor to provide VEIC with certain services in connection with its implementation of the Prime Contract; and

WHEREAS, Subcontractor offers unique services and desires to provide VEIC with such services in connection with the Prime Contract;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. **DEFINITIONS**
   When capitalized and italicized, whether in the singular or plural, the following words and phrases shall have the following meanings in constructing this Subcontract.

   A. **AMP** – means the American Municipal Power, Incorporated, a non-for-profit organization with headquarters at 1111 Schrock Road, Suite 100, Columbus, OH 43229

   B. **Contract Administrator** means the person or entity selected and retained by AMP, to manage, monitor and enforce the Prime Contract on behalf of and pursuant to the instructions of AMP.

   C. **Contractor** means Vermont Energy Investment Corporation or VEIC.

   D. **Customer** means an Efficiency Smart customer resides within a subscribing member utility service area.

   E. **Customized Software** means any computer software, including any related database structure, that is not readily available for purchase and that is modified, developed, and/or written by the Contractor or its subcontractor(s) specifically for the purpose of performing the Work.

   F. **Cut-off Date** means the 5th business day of the subsequent calendar month.

   G. **Efficiency Smart (ES)** is an energy efficiency program administered by VEIC on behalf of AMP.

   H. **ES Funds** means all funds to be used to support all aspects of ES operations for the 2011-2013 period.
I. **Fiscal Agent** means the person or entity selected and retained to receive the *ES Funds* and to disburse those funds.

J. **Market Actor** means a person, business or organization that affects the market availability and implementation of energy efficient technologies, products, practices and designs, including, but not limited to, design professionals, contractors, retailers, suppliers, manufacturers, associations and institutions.

K. **Subcontractor** means *Subcontractor Name* with its principal offices at *Address*.

L. **Subcontract Scope of Work** means the *Subcontractor’s Scope of Work* identified in *Attachment A* of this *Subcontract*.

M. **Subcontract** means this Subcontract and all Attachments hereto, as all may be amended from time to time.

N. **Subscribing Member Utility (SMU)** refers to an *AMP* member municipal utility, designated individually by city or town name that has subscribed to participate in Efficiency Smart.

O. **Subscription Period** means a period of time in which *AMP* member municipalities are recruited to join Efficiency Smart. The first subscription period began in June 2010 and will tentatively close by December 31, 2010. Service delivery will begin in January 2011 for communities enrolled during the first subscription period. A second subscription period enabling new enrollments into the Efficiency Smart program will begin in the 2nd quarter of 2012 for service delivery to begin in January 2013. Efficiency Smart reserves the right to enroll new communities ad hoc outside of subscription period.

P. **VEIC** means Vermont Energy Investment Corporation, a Vermont non-profit corporation with its principal offices at 255 South Champlain Street in Burlington, Vermont and whose Vermont Tax Identification Number is 430030304418F01, with *ES* offices at 1111 Schrock Road, Ste. 203 in Columbus, Ohio.

2. **SUBCONTRACT SCOPE OF WORK**
The *Subcontractor* shall furnish all necessary personnel, office space, equipment, materials, services, licenses, transportation, and other necessary resources to accomplish the *Subcontractor Scope of Work* as set forth in *Attachment A* of this *Subcontract*. Changes to the *Subcontract Scope of Work* may be made only by written agreement of both the *Subcontractor* and *VEIC*. 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* at any time; provided, that, *VEIC* must provide thirty (30) days’ advance written notice to *Subcontractor* of any such reduction (unless such notice would be impracticable under the circumstances).

All work products under the *Subcontract Scope of Work* shall be provided to *VEIC* using the applicable Microsoft Office application software or other such software as may be specified by *VEIC*. The minimum required software is Excel 2003, Word 2003, Access 2003 and PowerPoint 2003 -- Microsoft’s Office 2003 XP Suite. *Subcontractor* shall upgrade to new versions of Microsoft Office or other such software as may be
specified by VEIC at the same time VEIC does and shall use the same versions at the same time that VEIC does throughout the term of this Subcontract.

Subcontractor shall devote sufficient personnel to complete the Subcontractor Scope of Work in a timely manner, consistent with any milestones or deadlines set forth in Attachment C. Subcontractor shall provide VEIC with a list of the key personnel upon execution of this Subcontract, and VEIC reserves the right to reasonably reject any or all of the Subcontractor’s key personnel.

The Subcontractor shall carry out the Subcontractor Scope of Work in a professional and workmanlike manner, consistent with best practices in the industry and with due diligence and efficiency, in a practical manner designed to promote the purposes of the ES and with due regard to the obligations of the parties thereto.

3. TERM OF SUBCONTRACT
The Term of this Subcontract shall begin on ___________and end on __________unless amended or terminated earlier in accordance with the provisions of this Subcontract. Program services will end ___________and the Subcontractor will complete all reporting obligations by March 31, 2014. An option to extend the contract period may be available after the initial period at the discretion of Efficiency Smart.

Time is of the essence and all deadlines detailed in the Subcontract Scope of Work shall be strictly adhered to.

4. FEES AND PAYMENTS
The Subcontractor will be paid on a per-unit basis in accordance with Attachment B. Fees And Payments, which may change from time to time as agreed upon by both VEIC and the Subcontractor.

The Subcontractor will be paid in accordance with the following payment provisions: [Note to Drafter: Edit Fees and Payments by deleting the method below that DOES NOT apply to this particular subcontract]

Option # 1: Fixed Fee

The Subcontractor will be compensated based upon the Firm Fixed Fee amount of [$_____________] (______________-dollars) for all work specified in the Subcontractor Scope of Work, including all administrative and technical support. In addition to the Firm Fixed Fee, Subcontractor’s reimbursable expenses will be compensated in accordance with the Subcontractor’s Reimbursable Expenses Schedule (Attachment C) up to, but not to exceed, the estimated amount of [$__________]. The reimbursable expenses shall be charged to VEIC at Subcontractor’s actual cost, with no mark-up. No obligations for expenses beyond the estimated amount in Attachment C shall be reimbursed without prior written approval by VEIC. The schedule of rates set forth on Attachment B shall not change during the Term of this Subcontract, with the exception of mileage, which will be adjusted on a calendar year basis in accordance with changes in the IRS approved mileage rate for use of a personal automobile. Invoices shall be submitted monthly, based on the percentage completion of the Subcontractor Scope of Work, and shall indicate the work progressed on Scope components that is being invoiced; for reimbursable expenses invoices will show the tasks for which each expense was incurred. Prior to making any monthly payment, VEIC may request supporting documentation from the Subcontractor evidencing the completion of such work scope and achievement of any related milestones or deadlines set forth in Attachment A. The Fixed Fee includes all General and Administrative
Overhead; all Subcontractor administrative functions are understood to be compensated through the Subcontractor’s Fixed Fee, and only administrative assistance that is in direct support of production of the deliverables in the Scope of Work will be compensated by the Fixed Fee. Final Payment shall not be made until, as a minimum, review and approval by VEIC of the final deliverables is completed. If, following completion of such deliverables and final payment, VEIC determines that the deliverables contain errors or omissions, Subcontractor shall promptly correct such errors or omissions at no further cost to VEIC. Subcontractor acknowledges that it is required to complete the Subcontractor Scope of Work in return for the Firm Fixed Fee and Subcontractor shall not be entitled to any additional compensation hereunder, with the exception of the reimbursable expenses described herein.

In cases where VEIC requests an amendment to the previously agreed upon Subcontractor Scope of Work that is subject to a Firm Fixed Fee, VEIC and Subcontractor shall amend this Subcontract to include the additional scope and adjust the Firm Fixed Fee (in a manner consistent with how the original Fixed Firm Fee was determined) and any relevant deadlines.

Option # 2: Time and Materials

In performing the Subcontractor Scope of Work, the Subcontractor will be compensated on an Hourly Basis for labor, with a Not-To-Exceed (NTE) amount of [\$---------] (------------------dollars) in accordance with the Subcontractor’s Standard Billing Rates (Attachment B) and on an incurred basis for Reimbursable Expenses Schedule (Attachment C) up to, but not to exceed, the estimated amount of [\$---------]. The reimbursable expenses shall be charged to VEIC at Subcontractor’s actual cost, with no mark-up. Subcontractor shall not exceed these dollar amounts set forth above for labor and reimbursable expenses in performing the Subcontractor Scope of Work, unless approved in advance in writing by an authorized representative of VEIC. During each yearly anniversary of the Term of this Subcontract, Subcontractor may only increase the Standard Billing Rates for labor set forth on Attachment B by the lesser of (i) three percent (3%) or (ii) the average percentage change in the annual Consumer Price Index Northeast for all urban consumers (CPI-U) (1982-1984) over the then current contract year (CPI). The average percentage CPI change will be calculated by VEIC by January 1 of each year and will be used until the following January. [Do Not Use If a Single Year Contract] The schedule of rates set forth on Attachment C shall not change during the Term of this Subcontract, with the exception of mileage, which will be adjusted on a calendar year basis in accordance with changes in the IRS approved mileage rate for use of a personal automobile. With the exception of the increases provided for in the preceding 2 sentences regarding mileage and labor rates, Subcontractor shall not increase any other expenses set forth on Attachments B and C during the Term of this Subcontract. No obligations for expenses beyond the estimated amount in Attachment C shall be reimbursed without prior written approval by VEIC. The Standard Billing Rates include all General and Administrative Overhead; all Subcontractor administrative functions are understood to be compensated through the factor applied to determine the Standard Billing Rates, and only administrative assistance that is in direct support of production of the deliverables in the Scope of Work will be compensated on an hourly basis. Invoices shall be submitted monthly, including a breakdown showing the staff, hourly rate, hours, and the tasks progressed or completed for the invoice period. Prior to making any monthly payment, VEIC may request supporting documentation from the Subcontractor evidencing the completion of such tasks and achievement of any related milestones or deadlines set forth in Attachment A. Reimbursable expenses shall be invoiced in accordance with the Reimbursable Expenses Schedule; invoices must indicate the tasks for which the expenses were incurred, and the expenses itemized. If,
following completion of the deliverables required under the Subcontractor Scope of Work and final payment, VEIC determines that the deliverables contain errors or omissions, Subcontractor shall promptly correct such errors or omissions at no further cost to VEIC.

[Note to Drafter: If time and materials under Option # 2, (i) Attachment B should include the hourly labor rates and (ii) Attachment C should include the types of expenses (travel, copying, postage/delivery, etc.) that will be reimbursed at actual out-of-pocket cost. Also need to provide in Attachment C the basis for reimbursable costs, i.e. mileage reimbursement at the IRS-approved rate only for use of a personal motor vehicle; air travel via most direct route on coach class only, etc.]

5. INVOICE REQUIREMENTS AND PAYMENT TERMS

The Subcontractor shall submit monthly invoices of eligible Fees and Payments in accordance with Paragraph 4 above 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”.

If invoices are submitted by mail they should be sent to:

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

If submitted via e-mail invoices should be sent to AccountsPayable@veic.org.

All invoices shall, at a minimum, include:
- Subcontractor name,
- Subcontractor address,
- Federal Employer I.D. number (or Social security number if Subcontractor is an individual) of the Subcontractor;
- period covered by invoice;
- work order being billed for;
- Administrative Contact Name, Phone Number, and E-mail

The Subcontractor shall 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 Term of this Subcontract.

All labor and reimbursable expenses shall be clearly itemized and coded to appropriate VEIC job and project codes.

6. INVOICE REVIEW, APPROVAL AND PAYMENT

In order for the Subcontractor’s invoice to be paid, it must be approved by VEIC and be included as part of a VEIC monthly Prime Contract invoice that has been submitted and approved by the Contractor Administrator.
No later than five (5) business days after its receipt of an invoice, VEIC shall review the invoice and either approve the invoice for payment or inform the Subcontractor in writing of any disputed amount and the basis for such dispute.

If an invoice is disputed by VEIC, the Subcontractor shall answer VEIC’s concerns in writing within five (5) business days of the Subcontractor’s receipt of the written notice from VEIC. If VEIC and the Subcontractor cannot resolve the dispute within ten (10) business days after VEIC’s receipt of the Subcontractor’s reply, each party agrees to submit the dispute to final and binding arbitration as provided in Paragraph 28 below.

Subcontractor’s invoice will be submitted as part of VEIC’s current monthly Prime Contract invoice to the Contract Administrator only if it is received by VEIC by the Cut-off Date and only if it is not disputed by VEIC. If it is not received by the Cut-off Date, then Subcontractor’s approved invoice will not be submitted as part of VEIC’s current monthly Prime Contract invoice. Instead it will be submitted the following month. Disputed Subcontractor invoices will not be submitted until the dispute has been resolved and will be submitted as part of VEIC’s Prime Contract invoice based on the month in which the dispute was resolved (i.e., if the invoice was for May, but the dispute was not resolved until July, it would be submitted as part of VEIC’s July Prime Contract invoice).

If the Contract Administrator disputes any part of VEIC’s invoice that involves the Subcontractor’s invoice, then the Subcontractor shall provide any and all information required by either the Contract Administrator to resolve such dispute. Such information will be provided by any deadlines specified by the Contract Administrator. Any and all decisions made by the Contract Administrator concerning Subcontractor’s invoice shall be final and binding upon the Subcontractor.

Fully approved (meaning that the invoice has been approved by both the Contract Administrator and VEIC) Subcontractor invoices shall be paid by VEIC within thirty (30) days from the Cut-off Date.

Payment will be withheld on open invoices if a Certificate of Insurance showing coverage of the required insurances stated in Paragraph 21 of this contract is not on file with VEIC. It is the sole responsibility of the Subcontractor to have its insurance agent provide current certificates at each insurance renewal period of each type of insurance to VEIC.

### 7. TERMINATION OF SUBCONTRACT

**a) Termination of Prime Contract**

If the Prime Contract is terminated for any reason whatsoever then this Subcontract shall automatically terminate on the same date as the Prime Contract.

**b) Termination for Cause**

In the event that Subcontractor materially breaches the terms of this Subcontract, VEIC may without prejudice to any of its other legal remedies terminate this Subcontract upon fifteen (15) days written notice to Subcontractor and be relieved of the payment of any amount due to Subcontractor for Subcontractor Scope of Work performed prior to the date of such termination, except as provided in subparagraph “e” below. Alternatively, VEIC may, in its sole discretion, provide Subcontractor with time to cure any breach.
In the event this Subcontract is terminated for cause, VEIC may proceed in any manner it deems proper. Subcontractor shall be compensated for satisfactory services rendered and eligible costs and expenses as provided in subparagraph “e” below; however, in its discretion, VEIC may deduct from any sum due to Subcontractor under this Subcontract, all expense, damage or other harm incurred by VEIC, AMP, SMUs or any of their agents as a result of Subcontractor’s failure to perform its obligation under this Subcontract. Contractor reserves all other rights and remedies at law and in equity, in the event of a breach of this Subcontract by Subcontractor.

c) Termination – Bankruptcy
In the event proceedings in bankruptcy are commenced against the Subcontractor, it is adjudged bankrupt, or a receiver of any of its assets is appointed, VEIC may terminate this Subcontract by giving five (5) days notice in writing to the Subcontractor.

d) Termination at Will
VEIC may in its discretion terminate the Subcontract at any time without good cause upon giving thirty (60) days written notice to Subcontractor prior to said termination date. Subcontractor may terminate this Subcontract without good cause upon giving sixty (60) days written notice to VEIC prior to said termination date.

e) Responsibility of Parties Upon Expiration or Termination of Subcontract
Upon expiration or termination of this Subcontract, Subcontractor shall, as specifically instructed by VEIC, provide reasonable transition assistance as requested by VEIC to VEIC to ensure that the functions being performed by the Subcontractor for the ES are continuously carried out without interruption. In such event, Subcontractor shall use all reasonable efforts to mitigate its expenses and obligations hereunder.

Upon termination of this Subcontract, VEIC shall pay the Subcontractor, pursuant to the compensation terms set forth above in the Paragraph 4, for all satisfactory services rendered and eligible fees, costs and expenses prior to the notice of termination and until the actual Subcontract termination date. VEIC shall also pay Subcontractor for all reasonable services rendered and costs and expenses incurred by the Subcontractor subsequent to termination, but only for reasonable transition assistance as specifically directed by VEIC which could not, by reasonable efforts of the Subcontractor, have been avoided.

Notwithstanding the above, no payments shall be made by VEIC to the Subcontractor for eligible fees, costs and expenses prior to the notice of termination or for reasonable transition assistance thereafter unless such expenses are approved for payment to VEIC from AMP under the Prime Contract.

All work product(s), records and data related to Subcontract Scope of Work performed under this Subcontract in the possession of the Subcontractor and its subcontractor(s) shall be made available and turned over to the VEIC or its designated representative upon the expiration or termination of the Subcontract, at VEIC’s request. These transfers shall be accomplished no later than ten (10) business days after the date of notification to the Subcontractor to transfer the data and documents. Following a termination of this Subcontract, Subcontractor shall continue to adhere to the confidentiality provisions of this Subcontract.

8. REPORTING REQUIREMENTS
The Subcontractor shall provide progress reports to VEIC and any other entity designated by VEIC according to the schedule, formats, information and data, and other requirements set forth in and developed pursuant to the
Subcontractor Scope of Work and in accordance with VEIC’s Prime Contract. The Subcontractor shall work cooperatively with VEIC and any other entities designated by VEIC to develop appropriate formats for the required reports under this Subcontract. The Subcontractor shall also provide information, data and other materials to support, as needed, VEIC’s ongoing reporting requirements to AMP.

9. **Records Available for Audit and Inspection**

The Subcontractor shall maintain all books, documents, payroll papers, accounting records and all other evidence pertaining to this Subcontract, in accordance with Generally Accepted Accounting Principles consistently applied, and make them available at reasonable times during the term of this Subcontract and for three (3) years thereafter for inspection for any reason whatsoever by VEIC, AMP, the Contract Administrator, or any other authorized representative or agent of state and federal governments. Storage of electronic images of documents shall comply with the requirements of this paragraph. All such records shall also be available for inspection by VEIC for purposes of assessing the Subcontractor’s performance under this Subcontract; responding to any inquiry by AMP, the Contract Administrator, or any other authorized representative or agent of state and federal governments; to provide information pertaining to any pending or ongoing litigation, claim or audit; or in the event that Subcontractor breaches any of the terms of this Subcontract. If any litigation, claim, or audit is commenced before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records has been resolved.

Subcontractor shall include in its subcontract(s) a provision that states that its subcontractor(s)’ records related to the Subcontract Scope of Work shall be subject to audit and examination during the term of this Subcontract in accordance with the terms of this paragraph and for a period of three years after final payment under the relevant subcontract(s). Subcontractor shall comply with any standard format and documentation developed by VEIC and the Contract Administrator to implement the requirements of this Paragraph.

The fact that such inspection or monitoring is undertaken shall in no way relieve the Subcontractor of its obligations to properly perform its duties in accordance with this Subcontract nor from Subcontractor’s full responsibility and liability for damages or loss caused by Subcontractor, its subcontractor(s), employees or agents. Subcontractor’s obligations under this Paragraph shall be continual and shall not be affected by VEIC’s acceptance of an invoice from Subcontractor.

10. **Dispute Resolution Process**

In conjunction with the Contract Administrator, VEIC has developed procedures for addressing and resolving complaints concerning performance of its responsibilities from customers and other interested parties such as electric utilities, subcontractors, and trade allies. Subcontractor agrees to comply with all aspects of this dispute resolution process, as amended from time to time.

11. **Manage Customer-Specific and Competitively-Sensitive Information**

VEIC has developed and maintains a system that provides appropriate protections in the collection, processing, storage and retrieval of information that is customer-specific or could otherwise provide an unfair competitive advantage to an entity performing services outside of the energy efficiency programs for ES implementation. Subcontractor and its subcontractor(s) shall strictly observe all aspects of these systems and protect the confidentiality of any such information and agrees to abide by the guidelines developed by VEIC pursuant to its Prime Contract.
In addition, Subcontractor’s employees and its subcontractor(s)’ employees with access to confidential information shall be required to sign a protective agreement and a guidelines memo. To ensure that VEIC has a complete accounting of all of Subcontractor’s employees and its subcontractor(s)’ employees who are required to sign such a protective agreement and guidelines memo Subcontractor will provide VEIC a list of all of its employees and its subcontractor(s) employees who will require access to confidential information in order for the Subcontractor to undertake the Subcontract Scope of Work. This list will be provided to VEIC within seven (7) days of the execution of this Subcontract. Subcontractor will provide VEIC with any additions or deletions to this list within seven (7) days of such addition or deletion throughout the term of this Subcontract.

The Subcontractor agrees to indemnify VEIC for and hold VEIC harmless against any claims resulting from the release of any confidential information by Subcontractor’s employees, subcontractor(s), or agents.

Subcontractor will execute the form of Confidentiality Non-Disclosure Agreement attached as Attachment D upon signing this Subcontract. Subcontractor will adhere to the provisions of the Confidentiality Memo attached as Attachment D.

12. QUALITY ASSURANCE
VEIC and the Subcontractor will develop, maintain and adhere to a set of mutually agreeable quality assurance standards and tracking and monitoring mechanisms, for the implementation of the Subcontract Scope of Work. These quality assurance standards and tracking and monitoring mechanisms must also adhere to the Prime Contract and be approved by the Contract Administrator.

13. INSPECTION OF WORK
VEIC, AMP, or any other authorized representative shall have the right at all reasonable times, to inspect, monitor, or otherwise evaluate the Subcontract Scope of Work. The Subcontractor shall provide the above entities with any relevant information requested and shall permit access to its premises, upon reasonable notice, during normal business hours for all relevant purposes including, but not limited to, interviewing employees (including those of its subcontractor(s)) and inspecting and/or copying such books, records, accounts, work papers, equipment and products, and any and all other materials that may be relevant to the Subcontract Scope of Work. Subcontractor shall include in its subcontract(s) a provision that requires that the subcontractor(s)’ records, information, equipment, personnel and all relevant materials related to the Subcontract Scope of Work performed under this Subcontract to be subject to inspection during the term of this Subcontract. Subcontractor shall comply with the process and requirements necessary to implement the requirements of this Paragraph as they are developed by VEIC, the Contract Administrator, or any other authorized representative designated by AMP.

The fact that such inspection or monitoring is undertaken shall in no way relieve the Subcontractor from its obligations to properly perform its duties in accordance with this Subcontract nor from Subcontractor’s full responsibility and liability for damages or loss caused by Subcontractor, its subcontractor(s), employees or agents.

14. OWNERSHIP OF DATA, RECORDS, AND INTELLECTUAL PROPERTY
a) Data
All data obtained by Subcontractor or any of its subcontractor(s) in the course of performing the duties outlined in this Subcontract Scope of Work shall be the property of AMP and available to VEIC and AMP and their designated representatives for the oversight of this Subcontract.

b) Work Product
All products of the Subcontractor’s and its subcontractor(s) including logos, trademarks, service marks, data, communications and records originated, developed or prepared by the Subcontractor or its subcontractor(s), or jointly by the Subcontractor, subcontractor(s), and VEIC, AMP or their agents pursuant to this Subcontract, including but not limited to papers, outlines, drawings, sketches, art work, plans, photographs, specifications, estimates, reports, charts, surveys, survey results, computer databases or software and spreadsheets and other similar documentation, and any Subcontract Scope of Work product determined by VEIC or AMP to be necessary to the success of the programs approved for implementation by the ES shall be delivered to and shall become the exclusive property of AMP and may be copyrighted by AMP. The preceding sentence shall not apply to administrative communications between VEIC and the Subcontract, or administrative communications between the Subcontractor and its subcontractor(s), and attorney-client communications between the Subcontractor and its attorneys. Subcontractor and its subcontractor(s) may not copyright or resell the above Subcontract Scope of Work product.

c) Equipment and Materials Provided by or for Use by VEIC or AMP
All property, equipment or materials purchased directly by the VEIC or AMP, or furnished to the Subcontractor by VEIC or AMP, under this Subcontract, is provided on a loan basis only and remains the sole property of either VEIC or AMP as applicable. Property or equipment purchased by Subcontractor to perform this Subcontract shall be the sole property of the Subcontractor unless specified otherwise in this Subcontract.

Subcontractor agrees that all products used to perform this Subcontract, including computer software, hardware and program products must be currently manufactured and available for general sale, lease or license on the date of consummation of or during the term of this Subcontract. The intent of this paragraph is to ensure that all products, including computer software, necessary for the successful operation of the ES are available (via sale, lease or license) to any subsequent contractor or subcontractor who assumes any of the duties of the ES. In addition, during the term of this Subcontract, VEIC or AMP reserves the right to use any of the equipment purchased and/or materials or programs developed by the Subcontractor or any of its subcontractor(s) to perform this Subcontract, excluding equipment and/or material in the possession of the Subcontractor or any of its subcontractor(s) prior to the execution of this Subcontract, and also excluding equipment, materials or programs purchased by the Subcontractor that Subcontractor uses jointly in connection with the Subcontract Scope of Work and with Subcontractor’s other activities.

d) Research Reports or Similar Publications
Prior written approval by VEIC is required in order for the Subcontractor to prepare or present any research report, conference presentation, journal paper or similar other publication that identifies the ES or relies on data acquired from the Subcontractor’s or its subcontractor(s)’ performance of this Subcontract. If VEIC does provide its approval, VEIC shall review and approve, prior to public release, any such research report or similar publication.

e) Paragraph 14 Survives Expiration or Termination of This Subcontract
The terms of Paragraph 14 shall continue in effect after the expiration or termination of this Subcontract.
15. CONFLICT-OF-INTEREST PROVISION

Subcontractor and its subcontractor(s) may engage in business activities other than those described directly below, as long as these activities do not create a conflict of interest with the performance of the Subcontract Scope of Work. Subcontractor also affirms that it, its applicable employees and subcontractor(s) shall promptly and fully inform VEIC in writing of any business activities and/or relationships which any person, fully acquainted with the circumstances, might reasonably conclude could unfairly disadvantage another party, and agree that they shall abide by VEIC’s or AMP’s reasonable determination as to whether such activities or relationships are prohibited by the terms of this Paragraph.

Subcontractor affirms that neither it, nor any of its applicable personnel or subcontractor(s), have or presently expect any beneficial, contractual or business relationship with the Contract Administrator or Fiscal Agent that will be directly affected by the Subcontractor’s performance of the Subcontract Scope of Work. Subcontractor further affirms that it and its applicable personnel and subcontractor(s) shall not develop, pursue, or confirm any such beneficial, contractual, or business relationships with the Contract Administrator or the Fiscal Agent throughout the term of this Subcontract, and for six (6) months thereafter.

The Subcontractor may perform work for distribution utilities or other parties as long as such work does not create a conflict of interest with the Prime Contract Scope of Work and is in compliance with the terms of Paragraph 33 of this Subcontract. The Subcontractor shall disclose in writing to VEIC, on an on-going basis throughout the term of this Subcontract any contracts it enters into with any distribution utilities.

16. LEGISLATIVE TESTIMONY

In order to prevent confusion regarding whether testimony before any local, state, or federal legislative body is being presented on behalf of the ES or on behalf of Subcontractor, the parties agree to the following guidelines:

- The Subcontractor shall not provide legislative testimony on any subject that pertains to the work of the ES without the prior written approval of VEIC. If the Subcontractor does, based on such written approval from VEIC, provide legislative testimony in its capacity as a Subcontractor to the ES, it shall allow VEIC to review and comment on such testimony prior to presenting or submitting such testimony. In addition, Subcontractor shall provide VEIC with a copy of any written materials specifically developed for, and handed out at, any appearance.
- Any person testifying at the legislature on behalf of the Subcontractor or the ES shall state on the record at the beginning of his/her testimony which entity he/she is representing.
- Any person testifying at the legislature on behalf of the Subcontractor or the ES shall not provide testimony that would, in the reasonable judgment of VEIC, diminish the Subcontractor’s effectiveness in providing support under this Subcontract or diminish legislative support for the ES.

17. PERFORMANCE CONTRACTING

If the Subcontractor or any of its subcontractors advises an ES customer to use performance contracting and the Subcontractor or its subcontractor desires to bid for that contract, the Subcontractor or its subcontractor shall notify VEIC and the Contract Administrator in advance of submitting a bid. The Contract Administrator or VEIC may contact the customer and/or use other mechanisms to ensure that the Subcontractor’s or its subcontractor’s relationship with the ES does not give either of them an unfair advantage in the bidding process.
18. RETAIL SALES RESTRICTION
Subcontractor agrees not to sell electric energy at retail in AMP utility regions prior to the expiration or termination of this Subcontract nor for a period of one year thereafter. Subcontractor also agrees that it:

- shall not disclose non-public AMP regional market information to any of its affiliates which, during the term of this Subcontract and for a period of one year thereafter, is engaged in selling, or may sell electric energy at retail in AMP regions (“Competitive Affiliate”); and
- shall not utilize any employee of such Competitive Affiliate to perform services under this Subcontract.

The Subcontractor shall require its subcontractor(s) to agree in writing to the provisions of this Paragraph.

19. USE OF ES’S NAME
The ES’s official name shall be “Efficiency Smart” or such other name as the AMP may approve after consultation with VEIC. This is the name that shall appear on all ES marketing materials. The Subcontractor and its subcontractor(s) shall use only the official name of the ES when providing ES services and making public representations on behalf of the ES. The name(s) of the Subcontractor’s firm, its subcontractor(s)’ firm, or their affiliate(s)’ firms shall not appear on any ES marketing materials or other ES documents provided to SMU ratepayers, trade allies, or Market Actors.

The Subcontractor or its subcontractor(s) may use the official ES name for ES purposes only, except that the Subcontractor will not be precluded from including its work with the ES in its individual companies’ project lists, or from describing its work with the ES to other potential employers. The preceding paragraph is intended to prevent confusion among SMU ratepayers and trade allies: the ES shall have one name and one identity that will be the only name and identity used by individuals and firms when they are providing ES products and services.

20. INSURANCE
Before commencing Work on this Subcontract, the Subcontractor shall provide Certificates of Insurance to show that the following minimum coverages are in effect. Where applicable the Certificates of Insurance shall name VEIC as additionally insured party as its interests may appear. All policies shall be non-cancellable without 30 days prior written notice from the insurance carrier to VEIC. It is the responsibility of the Subcontractor to maintain current Certificates of Insurance on file with VEIC through the term of this Subcontract.

Workers’ Compensation: With respect to all operations performed under this Subcontract, the Subcontractor shall carry, if applicable, workers’ compensation insurance in accordance with the laws of AMP and any other state in which it is performing the Subcontract Scope of Work.

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

- Premises – Operations
- Independent Contractors’ Protective
- Products and Completed Operations (where appropriate)
Personal Injury Liability
Contractual Liability.

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

- $1,000,000 Per Occurrence
- $1,000,000 General Aggregate
- $1,000,000 Products/Completed Products Aggregate (where appropriate)
- $50,000 Fire Legal Liability

**Automotive Liability:** The Subcontractor shall carry automotive liability insurance covering all motor vehicles, no matter the ownership status, used in connection with this Subcontract. Limits of coverage shall not be less than $1,000,000 combined single limit or the amount required by any applicable state law, whichever is greater.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Subcontractor for the Subcontractor’s operations. These are solely minimums that have been set to protect the interests of VEIC.

**21. INDEPENDENT CONTRACTOR**
For the purposes hereof, the Subcontractor is an independent contractor, and shall not be deemed to be an employee or agent of VEIC or AMP. Except as specifically provided herein, neither party, nor their employees, agents, or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other. The Subcontractor shall pay any and all taxes and fees on it imposed by any government under this Subcontract.

**22. ASSIGNMENT OR SUBLET OF SUBCONTRACT**
Subcontractor may not assign or sublet any performance of the Subcontract Scope of Work without the prior written approval of VEIC. Such approval will not be unreasonably withheld. VEIC reserves the right to reject any substitution of Subcontractor’s key personnel.

The performance of the Subcontract Scope of Work shall be the sole responsibility of and under the sole control, management, and supervision of the Subcontractor. The Subcontractor shall be responsible for all matters involving any of its subcontractors engaged under this Subcontract, including contract compliance, performance and dispute resolution between itself and its subcontractor(s). Subcontractor shall be responsible for all actions of its subcontractor(s) and all payments to its subcontractor(s). Failure of its subcontractor(s) to perform for any reason does not relieve Subcontractor of responsibility for the competent and timely performance of the Subcontract Scope of Work. VEIC shall have no responsibility for Subcontractor’s subcontractor(s)’ compliance, performance, or dispute resolution hereunder. Subcontractor shall include in all its subcontract agreement(s) a tax certification in a form that is substantially identical to that required for Subcontractor by Paragraph 30 of this Subcontract as well as all other notices to and requirements of its subcontractor(s) required by this Subcontract.
23. **INDEMNIFICATION**
The *Subcontractor* shall indemnify, defend and hold harmless *VEIC* and *AMP* and their respective officers and employees from and against any liability and any claims, suits, judgments, and damages arising as a result in whole or in part from any of the *Subcontractor*’s, its employees’ or its subcontractors’ acts and/or omissions in the performance of this *Subcontract*.

24. **NOTIFICATIONS REQUIRED UNDER THIS SUBCONTRACT**
Correspondence and transmittals of formal notifications, requests, reports or other documents concerning this *Subcontract*, to be effective, shall be addressed to the respective persons as follows:

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<tr>
<td><strong>VEIC</strong></td>
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<td></td>
<td>Scott Johnstone</td>
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<td></td>
<td>VEIC Executive Director</td>
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<td></td>
<td>Vermont Energy Investment Corporation</td>
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<td></td>
<td>128 Lakeside Avenue</td>
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<td></td>
<td>Suite 401</td>
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<td></td>
<td>Burlington, VT 05401-4717</td>
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<td></td>
<td>802-658-6060</td>
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<td></td>
<td>Fax 802-658-1643</td>
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<tr>
<th><strong>Subcontractor</strong></th>
<th><strong>Subcontractor Contact Name</strong></th>
<th><strong>Subcontractor Contact Title</strong></th>
<th><strong>Subcontractor Contact Organization</strong></th>
<th><strong>Address</strong></th>
<th><strong>Phone</strong></th>
<th><strong>email address</strong></th>
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*VEIC* and the *Subcontractor* may change their contact person, address or telephone numbers at any time upon written notice to the other party.

25. **REPRESENTATIONS AND WARRANTIES**
The *Subcontractor* represents and warrants that it is in the business of providing the *Subcontract Scope of Work* and that it shall perform the *Subcontract Scope of Work*:

- in accordance with generally accepted best industry principles and practices; and
- in a manner consistent with that level of care normally exercised by members of its profession undertaking services of the sort described herein.
- as to any products delivered by *Subcontractor* under this *Subcontract*, they shall be free from defects in materials and workmanship and shall be of merchantable quality.

26. **PERMITS, LAWS, REGULATIONS AND PUBLIC ORDINANCES**
The *Subcontractor* shall secure and pay for all permits and licenses required to perform the *Subcontract Scope of Work*, shall comply with all applicable federal, state and local laws, regulations, and ordinances governing the
performance of the Subcontract Scope of Work, and shall indemnify, defend, and save VEIC and AMP harmless from any and all liability, fine, damage, cost and expense arising from Subcontractor’s failure to do so.

27. SETTLEMENT OF DISPUTES
Any disputes or differences arising out of this Subcontract which cannot be amicably settled between the parties shall be finally settled 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 shall take place in Burlington, Vermont. Each party to the arbitration shall fully bear their own costs. The costs of the arbitrator shall be borne equally.

28. NO EMPLOYEE BENEFITS FOR SUBCONTRACTOR
The Subcontractor understands that neither VEIC nor AMP will provide Subcontractor or Subcontractor’s employees or subcontractors with any individual retirement benefits, group life insurance, group health and dental insurance, vacation and sick leave, Workers’ Compensation or other benefits or services available to VEIC employees, nor will VEIC withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of this Subcontract. The Subcontractor understands that all tax returns required by the Internal Revenue Code and any state, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Subcontractor.

29. TAXES DUE TO THE STATE
Subcontractor understands and acknowledges responsibility, if applicable, for compliance with all state tax laws, including income tax withholding for employees performing services within the state, payment of use tax on property used within the state, and corporate and/or personal income tax on income earned within the state.

Subcontractor certifies under the pains and penalties of perjury that, as of the date this Subcontract is signed, the Subcontractor is in good standing with respect to, or in full compliance with a plan to pay any and all taxes due the state.

30. SUSPENSION OF PAYMENT TO SUBCONTRACTOR
In addition to other remedies, VEIC reserves the right to suspend all payments to Subcontractor if required reports are not provided to VEIC or its designated representatives on a timely basis; if there are continuing deficiencies in Subcontractor’s reporting, record keeping or invoicing responsibilities and requirements; or if the performance of the Subcontract Scope of Work is not adequately evidenced.

31. NO GIFTS OR GRATUITIES
Subcontractor, its employees, agents or subcontractor(s) shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of VEIC, AMP, the Contract Administrator or the Fiscal Agent during the term of this Subcontract.
32. **NON-COMPETE**
For good and valuable consideration and as an inducement for **VEIC** to subcontract with **Subcontractor**, **Subcontractor** agrees not to directly or indirectly compete with **VEIC** within **AMP** regions in any manner related to the **ES** during the period of the **Prime Contract** and any extensions thereof.

The term "not compete" as used herein shall mean that **Subcontractor** shall not:
1) bid against **VEIC** on any project related to the **ES** or
2) own, manage, operate, or consult to any Ohio, Pennsylvania, Michigan, Kentucky, West Virginia or Virginia business substantially similar to or competitive with the business activities conducted by the **VEIC** or any of **VEIC**’s subcontractors in carrying out the rights, duties or obligations of the **ES**.

**Subcontractor** acknowledges that **VEIC** shall or may in reliance on this agreement provide **Subcontractor** access to trade secrets, customer-specific information, competitively sensitive information, aggregated data, and other confidential data and good will. **Subcontractor** agrees to retain said information as confidential and not to use said information on his or her own behalf or disclose same to any third party. **Subcontractor** also agrees to abide by the other provisions regarding confidentiality contained herein and any other confidentiality related guidelines or directives that **VEIC** may promulgate from time to time. **VEIC** shall have the right to enforce this provision through judicial action, including injunctive relief.

This agreement not to compete shall be binding upon and inure to the benefit of the parties, their successors, assigns, and personal representatives.

33. **FAIR EMPLOYMENT PRACTICES AND AMERICAN DISABILITIES ACT**
**Subcontractor** shall comply with the requirements of Chapter 4112: Civil Rights Commission of the Ohio Revised Code, relating to fair employment practices, to the full extent applicable. **Subcontractor** shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the **Subcontractor** under this **Subcontract**. **Subcontractor** further agrees to include this provision in all of its subcontracts.

34. **FORCE MAJEURE**
Either party’s performance of any part of this **Subcontract** shall be excused to the extent that it is hindered, delayed or otherwise made impractical by reason of flood, riot, fire, explosion, war, acts or omissions of the other party or any other cause, whether similar or dissimilar to those listed, beyond the reasonable control of the non-performing party. If any such event occurs, the non-performing party shall make reasonable efforts to notify the other party of the nature of such condition and the extent of the delay and shall make reasonable, good faith efforts to resume performance as soon as possible.

35. **SEVERABILITY**
If any provision of this **Subcontract** shall be adjudged to be invalid, then that provision shall be deemed null and void and severable from the remaining provisions, shall in no way affect the validity of this **Subcontract**, and the remaining provisions shall be integrated so as to give the greatest effect thereto.
36. **SURVIVAL OF REQUIREMENTS**
Unless otherwise authorized in writing by *VEIC*, the terms and conditions of this *Subcontract* shall survive the performance period and shall continue in full force and effect until the *Subcontractor* has completed and is in compliance with all of the requirements hereof. Any confidentiality requirements set forth in or developed pursuant to this *Subcontract* shall continue after the expiration or termination of this *Subcontract* in perpetuity.

37. **WAIVER**
Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

38. **APPLICABLE LAW**
This *Subcontract* shall be governed by the laws of the state of Ohio.

39. **AMENDMENT**
No changes, modifications, amendments or extensions in the terms and conditions of this *Subcontract* shall be effective unless agreed to in writing and signed by the duly authorized representatives of *VEIC* and the *Subcontractor*.

40. **POLITICAL ACTIVITY**
Whenever the *Subcontractor* is representing themselves as and/or conducting work for *VEIC* under this *Subcontract* the *Subcontractor* agrees to strictly adhere to *VEIC’s* policy on political activity as detailed in Attachment E.

41. **ENTIRE AGREEMENT**
This *Subcontract* with the following Attachments represents the entire agreement between the parties relating to the subject hereof. All prior agreements, representations, statements, negotiations, and understandings are merged herein and shall have no effect. This *Subcontract* consists of the following documents listed in order of precedence from highest to lowest:

- Main Body of the *Subcontract*
- Attachment A - Statement of Work
- Attachment B - Fees and Payments
- Attachment C - Key Dates
- Attachment D - Confidentiality Memo
- Attachment E - Political Activity Policy

The above Attachments are hereby incorporated into this *Subcontract* and made a part hereof for all purposes. If there is any conflict between the terms of these documents, the order of precedence indicated above shall be controlling.
42. CAPACITY CREDITS/ENVIRONMENTAL CREDITS
The Subcontractor agrees that Efficiency Smart holds the sole rights to any electric system capacity credits and/or environmental /pollution credits associated with the energy efficiency measures for which incentives have been received. These credits will be used for the benefit of SMU ratepayers.

43. ACCEPTANCE OF SUBCONTRACT
This Subcontract will become effective when signed by both parties. Transmittal of signatures by facsimile, internet or other means is as valid for all purposes as the delivery of signed original documents.

IN WITNESS WHEREOF, Subcontractor and VEIC have caused this Subcontract to be executed.

FOR SUBCONTRACTOR

______________________________  __________________________
Signature  

______________________________  __________________________
Printed Name  Scott Johnstone
Printed Name

______________________________  __________________________
Title  Executive Director
Title

______________________________  __________________________
Date  Date

FED ID #