

Subject:

Contract 2010-002 SB 323

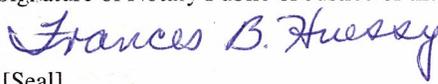
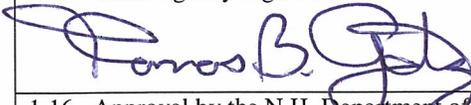
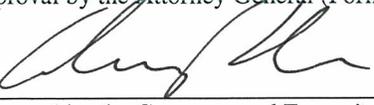
FORM NUMBER P-37 ( version 1/09)

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name New Hampshire Public Utilities Commission		1.2 State Agency Address 21 South Fruit Street, Suite 10, Concord, NH 03301	
1.3 Contractor Name Vermont Energy Investment Corporation (VEIC)		1.4 Contractor Address 255 S. Champlain Street, Suite 7 Burlington, VT 05401-4894	
1.5 Contractor Phone Number (802) 658-6060	1.6 Account Number 010-081- 1840000-50464	1.7 Completion Date March 30, 2012	1.8 Price Limitation 282,965
1.9 Contracting Officer for State Agency Thomas B. Getz		1.10 State Agency Telephone Number 603-271-2431	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Scott Johnstone Executive Director	
1.13 Acknowledgement: State of <u>Vermont</u> , County of <u>Chittenden</u> On <u>18<sup>th</sup> Nov. 2010</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <u>FRANCES B. HOESSY, Notary My commission exp. 2/10/12</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>Thomas B. Getz, Chairman</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>11/28/10</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**  
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**  
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials   
Date 11/18/10

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials ES  
Date 11/18/12

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials   
Date 11/18/10

## EXHIBIT A

### SCOPE OF SERVICES

The Vermont Energy Investment Corporation (VEIC or Grantee) agrees to provide consulting services for an independent study of energy policy issues pursuant to NH Chapter 335 of the Laws of 2010, otherwise known as SB323. Specifically, VEIC will carry out the following tasks:

1. Conduct an independent study of New Hampshire energy efficiency, conservation, demand response, and sustainable energy programs, initiatives, roles, existing and potential new funding sources, delivery systems, and policy options.
2. Work in consultation with the Study Coordination Team in developing and refining the study and report.
3. Consult with and/or otherwise obtain input from key stakeholders, including conducting a limited number of selected interviews, as appropriate to inform the study. Key stakeholder groups may include: government leaders; regulated utilities; energy service companies; energy efficiency and sustainable energy designers, contractors, vendors, business trades people, and lenders; representatives of commercial and residential customer interests; relevant advocates and trade organizations; deliverable fuel dealers, etc.
4. Complete a final report which shall address all aspects of the study, and incorporate relevant issues, best practices and policy recommendations as set forth in the cited SB323, including but not limited to the following:
  - a. existing state energy efficiency, conservation, demand response and sustainable energy programs and incentives, and possible improvements to maximize their effectiveness;
  - b. exploration of the pros and cons of various program administration models, including the role of regulated utilities, energy service companies and others, in capturing all cost-effective efficiency for all fuels;
  - c. effectiveness, availability and sustainability of both public funding as well as market-based approaches to support adequate long-term investments in efficiency and clean energy;
  - d. policy changes including various regulatory and rate structures, as well as statutory approaches, to achieve the state's energy, environment, and economic goals, including those identified in the NH Climate Action Plan and the Governor's 25 x 25 Renewable Energy Initiative;
  - e. any other complementary public policies - such as codes, standards, building energy ratings, EM&V protocols, etc. - that ought to be considered in seeking to maximize energy savings for NH customers;
  - f. a description of the costs and benefits of different approaches to achieving the state's goals that informs the consultant's recommendations; and
  - g. a synthesis and summary of significant, relevant stakeholder and public input and feedback considered.
5. Participate approximately every two weeks in a conference call to provide status updates on the progress of the study.
6. Prepare and deliver a detailed outline of the issues to be addressed by the study on or before February 1, 2011.

Contractor Initials

Date 11/18/10

Page 1 of 2

7. Meet with the EESE Board for consultation and discussion of the report in progress, likely once in early 2011, and again before issuance of the final report.
8. Prepare and deliver a draft report on or before May 1, 2011.
9. Prepare and deliver a final written report and Executive Summary on or before August 1, 2011.
10. Allocate two days, one anticipated for fall 2011, and a second in winter 2012, to provide public presentations to legislative leaders and committees, the EESE Board, and other interested stakeholder groups, as determined in consultation with the Study Coordination Team.

Except as otherwise provided in this contract, the requirements set forth in the NH Public Utilities Commission Request for Proposal issued August 25, 2010 and Grantee's Proposal dated September 24, 2010, are incorporated herein by reference as further defining the services to be rendered.

The NHPUC reserves the right to direct the Contractor's activities and all personnel assignments as the NHPUC deems appropriate. The NHPUC must be notified in writing of any substitutions or changes in personnel available for assignment to the NHPUC. The Contractor agrees to maintain confidential all information to which it has access until such time as it is instructed otherwise by the NHPUC.

Contractor Initials   
Date 11/18/10  
Page 2 of 2

**EXHIBIT B**

**GRANT AMOUNT, TERMS AND METHODS OF PAYMENT**

1. Estimated Budget: The Contractor will charge for professional consulting services for time involved and expenses incurred for an amount not to exceed \$282,965. Services will be provided as presented in Contractor's proposal dated September 24, 2010 and at the following hourly rates:

<b>Personnel</b>	<b>Hourly Rates</b>
Christine Donovan	\$150
Scudder Parker	\$150
Alison Hollingsworth	\$120
Jeff Taylor	\$120
Steve Whitman	\$75
Philip Mosenthal	\$200
Paul Scheckel	\$120
Chris Badger	\$120
Shawn Enterline	\$120
Nikki Kuhn	\$120
Betsy Harper	\$120
Alec Antczak	\$100
Nikki Clase	\$60

2. Price Limitation: In no event will the contract exceed \$282,965.
3. Method of Payment: Payment to be made on completion of the work on the basis of monthly invoices which are supported by a summary of activities that have taken place in accordance with the terms of the contract, along with a detailed listing of expenses incurred. Invoices will provide adequate back-up including the dates and hours worked per individual during the month and the service provided during those hours. Invoices will be submitted to: Business Office, New Hampshire Public Utilities Commission, 21 South Fruit Street, Suite 10, Concord, NH 03301-2429.

Payments hereunder are contingent upon the availability of funds assessed pursuant to RSA 365:37, II. The Commission will assess the costs of the contract to the appropriate parties, and, upon payment of the assessment, will in turn process payment to the Contractor.

Contractor Initials 

Date 11/18/10

Page 1 of 1

**EXHIBIT C**  
**SPECIAL PROVISIONS**

There are no special provisions.

CERTIFICATE OF AUTHORITY

I, Beth Sachs, Clerk/Secretary of VAC, do hereby certify that:

- 1. I maintain and have custody of and am familiar with the seal and minute books of the corporation;
- 2. I am authorized to issue certificates with respect to the contents of such books and to affix such seal to such certificate;
- 3. The following (is a)(are) true and complete copy(ies) of the resolution(s) <sup>to be</sup> adopted by the board of directors of the corporation at a meeting of that board on Dec. 2, 2010, which meeting was held in accordance with the law of the state of corporation and the by-laws of the corporation:  
 Resolved: That the Executive Director is hereby authorized on behalf of this Corporation to enter into the said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions or modifications thereto, as he may deem necessary, desirable or appropriate.
- 4. The following is a true and complete copy of a by-law <sup>to be</sup> adopted at a (shareholders)(organizational) meeting on Dec. 2, 2010.
- 5. The forgoing resolution(s) and by-laws are in full force and effect, un-amended, as of the date hereof; and
- 6. The following person(s) lawfully occupy the office(s) indicated below:

Charles Stone President  
Susan Coakley Vice President  
John Gilroy Treasurer

IN WITNESS WHEREOF, I have set my hand as the Clerk/Secretary of the Corporation this 18 day of Nov., 2010.

[Signature]  
Clerk/Secretary

(Corporate Seal if any)

STATE OF Vermont  
COUNTY OF Chittenden

On Nov. 18, 2010, before the undersigned officer personally appeared the person identified in the foregoing certificate known to me (or satisfactorily proven) to be the Clerk/Secretary of the corporation identified in the foregoing certificate, and acknowledge that he/she executed the foregoing certificate.

In witness whereof I hereunto set me hand and official seal.

Frances B. Hussey  
Notary Public/Justice of the Peace  
Commission expires  
11/12/2011

