

State of Vermont

Agency of Natural Resources
Department of Forests, Parks and Recreation

Design / Build Heat Pump System
FPR-GS-DESIGN BUILD SERVICES -111 WEST STREET

111 West Street
Essex Junction, VT

Project Documents

October 2017

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**INVITATION TO BID
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
STATE OF VERMONT**

Contractors are invited to bid on the ANR/FPR Design and Build of a Heat Pump System for the Agency of Natural Resources at 111 West Street Bldg. 11 in Essex VT , Vermont.

This project consists of, but is not limited to Design and Install a multi-head heat pump system for the proposed building located at 111 West Street, Essex Junction VT 05452. The size of the new equipment will be based on energy efficiency measures that will be implemented in a future energy conservation (envelope upgrade) project. Energy efficiency measures to be accomplished during that future project will achieve an R-50 value in the attic space, R-25 in the atrium and R-21 in the foundation walls and basement.

Sizing of the cooling equipment shall be the responsibility of the contractor. All equipment shall be sized based on the cooling load. The existing heating system will remain in place.

The intent is to have the equipment in place and ready to be started prior to the cooling season (2018). The building has an existing ventilation system that will remain. No ventilation will be included in the scope of this work. No work associated with the exiting building heat will be included in this scope.

The Contractor will be responsible for the complete scope and all required sub-contractors.

Sealed Bids accompanied by proper Bid Security will be received by the Department of Buildings and General Services, at 109 State Street, Montpelier, Vermont 05609-3001, until **Wednesday, November 29, 2017, at 2:00 PM** at which time they will be opened and publicly read aloud in the department conference room.

Documents may be obtained from **Blueprints Etc**, 20 Farrell Street, South Burlington VT 05403, by phone at 802-865-4503, by fax at 802-865-0027 or email to: orders@blueprintsetc.com. Project Manuals and Plans are available for preview and download at: <http://www.blueprintsetc.com> in the Public Plan Room. Any and all notifications, releases and amendments associated with this project will be posted at <http://www.blueprintsetc.com>. There is a non-refundable fee of for each set of documents.

Hard Copy Fee: \$TBD

Downloadable Fee: \$TBD

- 1. Please be advised that all notifications, releases, and addendums associated with this RFP will be posted on-line in the plan room where the original solicitation resides unless otherwise determined that a hard copy is necessary. The state will make no attempt to contact contractors with updated information. It is the responsibility of each contractor to periodically check the posting site for any and all notifications, releases and addendums associated with the RFP.**
- 2. NOTE:** On occasion hard copy addendums may be required due to size or type of media/requirements. If applicable and as determined by the Department of Buildings and General Services, addendums that require hard copy distribution, a copy of such addenda will be mailed or delivered for each set of plans and specifications issued to the

bidders, prior to the bid date. However, it is the responsibility of the bidder to be sure they have received all addenda, and must so state the number of addenda they have received on the proposal.

There will be a **Mandatory** pre-bid meeting at the site on **Wednesday, November 1, 2017 at 4:00 PM**.

Bidder's attention is directed to:

1. General Conditions for Construction Contracts. It is the Bidder's responsibility to thoroughly read and comply with all requirements. Please pay close attention due to changes that have been made.
2. **BID SUBMISSION INSTRUCTIONS:**
 - a. **CLOSING DATE:** Bids must be received by the due date and at the location specified on the front page of this RFP.
 - b. The bid opening will be held at **109 State Street, Third Floor, Montpelier, VT** and is open to the public.
 - c. **SECURITY PROCEDURES:** Please be advised extra time will be needed when visiting and/or delivering information to 109 State Street. All individuals visiting 109 State Street must present a valid government issued photo ID when entering the facility.
 - d. **SEALED BID INSTRUCTIONS:** All bids must be sealed and must be addressed to the State of Vermont, Office of Purchasing & Contracting, **109 State Street – Third Floor, Montpelier, VT 05609-3001**. BID ENVELOPES MUST BE CLEARLY MARKED 'SEALED BID' AND SHOW THE PROPOSAL TITLE, OPENING DATE AND NAME OF BIDDER.
 - e. All bidders are hereby notified that sealed bids must be received and time stamped by the Office of Purchasing & Contracting located at **109 State Street – Third Floor, Montpelier, VT 05609-3001** - by the time of the bid opening. Bids not in possession of the Office of Purchasing & Contracting at the time of the bid opening will be returned to the vendor, and will not be considered. **Any delay deemed caused by Security Procedures will be at the bidder's own risk.**
 - f. Office of Purchasing & Contracting may, for cause, change the date and/or time of bid openings or issue an addendum. If a change is made, the State will make a reasonable effort to inform all bidders by posting at: <http://www.bgs.state.vt.us/pca/bids/bids.php>
 - g. All bids will be publicly opened. Typically, the Office of Purchasing & Contracting will open the bid, read the name and address of the bidder, and read the bid amount. However, the Office of Purchasing & Contracting reserves the right to limit the information disclosed at the bid opening to the name and address of the bidder when, in its sole discretion, the Office of Purchasing & Contracting determines that the nature, type, or size of the bid is such that the Office of Purchasing & Contracting cannot immediately (at the opening) determine that the bids are in compliance with

the RFP. As such, there will be cases in which the bid amount will not be read at the bid opening. Bid openings are open to members of the public. Bid results are a public record however, the bid results are exempt from disclosure to the public until the award has been made and the contract is executed.

3. DELIVERY METHODS:

- a. **SECURITY PROCEDURES: Note that security procedures concerning delivery of any mail or parcels to 109 State Street may delay receipt of mail/parcel pieces by one business day.**
 - b. U.S. MAIL: Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by the Office of Purchasing & Contracting prior to the time of the bid opening.
 - c. EXPRESS DELIVERY: If bids are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received and time stamped by the Office of Purchasing & Contracting. **Due to security procedures express deliveries must be received by 10:30 AM in order to be received by the Office of Purchasing & Contracting that same day.**
 - d. HAND DELIVERY: Hand carried bids shall be delivered to a representative of the Office of Purchasing & Contracting prior to the bid opening.
 - e. ELECTRONIC: Electronic bids will not be accepted.
 - f. FAX BIDS: Faxed bids will not be accepted.
- 4. Full Bonding is required for this job.**
- 5. SUBMITTAL EXCHANGE®:** Contractor shall obtain a license for the State to utilize Submittal Exchange for the purposes of this project. The State and its representatives will have full control of the use of Submittal Exchange by authorized users of the State.

Submittal Exchange®, a web-based collaboration software system, shall be used to provide an on-line database and repository, which shall be used to transmit and track project-related documents. Based on an existing contract between the State and Submittal Exchange, the State anticipates that training and support during this project will be provided by Submittal Exchange at no additional cost to the selected contractor(s).

- 6. It is the Bidder's responsibility to thoroughly read and comply with all instructions and requirements of this bid solicitation.**

The Project Engineer, Gary Sabourin may be contacted for technical questions at 802-272-4145 or by email at Gary.Sabourin@vermont.gov.

Sincerely

Christopher Cole
Commissioner

INSTRUCTIONS TO BIDDERS – FULL BOND

STATE OF VERMONT DEPARTMENT OF BUILDINGS AND GENERAL SERVICES MONTPELIER, VERMONT

To be considered, Proposals must be made in accord with these Instructions to Bidders:

1. **DOCUMENTS:** Bona fide Bidders may obtain drawings and specifications from the Department of Buildings and General Services.
2. **PLAN SECURITY CERTIFICATION:** Contractor acknowledges that the plans pertaining to this project have been declared exempt from public record inspection for security reasons and have been disclosed to Contractor as per 1 V.S.A. §317(c)(32) for the performance of the Work specified herein. Contractor hereby expressly acknowledges and agrees to disclose plans *only to a licensed architect, engineer, or Contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the state.*

Furthermore, Contractor agrees to abide by BGS Administrative Policy # 35 and any existing or future directives set forth by the State concerning the copying or distribution of the plans. Fraud, misrepresentation, falsification, or concealing or covering up material facts relating to compliance with these directives may result in one or more of the following actions: termination of the contract(s), suspension of bidding privileges, withholding, deducts, forfeiture of security bonds, and criminal prosecution punishable by imprisonment of up to five years and/or up to a \$10,000 fine as per 13 V.S.A. §3016.

3. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.
 - (1) Bidder is required to self report detailed information including information relating to past violations, convictions, suspensions, and any other information related to past performance and likely compliance with proper coding and classification of employees requested by the applicable agency.

The bidder is required to report information on any violations that occurred in the previous 12 months. The Self Reporting requirements are identified and included as part of the Bid Proposal Form.
 - (2) Bidder is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

The Subcontractor Reporting requirements shall be required upon award of contract, and prior to contract execution. Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.
 - (3) For construction and transportation projects over \$250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the jobsite, and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request, and shall be available to the public.

4. **EXAMINATION:** Bidders shall carefully examine the documents and the construction site to obtain first-hand knowledge of existing conditions. Contractors will not be given extra payment for conditions, which can be determined by examining the site and documents.
5. **INTERPRETATION:** All requests for interpretation shall be directed to the Department of Buildings and General Services. Any interpretation of documents will be made by Addendum only. Addendums shall be posted on-line in the Plan Room where the original solicitation resides. **PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND ADDENDUMS ASSOCIATED WITH THIS RFP WILL BE POSTED ON-LINE IN THE PLAN ROOM WHERE THE ORIGINAL SOLICITATION RESIDES UNLESS OTHERWISE DETERMINED THAT A HARD COPY IS NECESSARY. THE STATE WILL MAKE NO ATTEMPT TO CONTACT CONTRACTORS WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH CONTRACTOR TO PERIODICALLY CHECK THE POSTING SITE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND ADDENDUMS ASSOCIATED WITH THE RFP.**

NOTE: On occasion hard copy addendums may be required due to size or type of media/requirements. If applicable and as determined by the Department of Buildings and General Services, Addendums that require hard copy distribution, a copy of such addenda will be mailed or delivered for each set of plans and specifications issued to the bidders, prior to the bid date. However, it is the responsibility of the bidder to be sure they have received all addenda, and must so state the number of addenda they have received on the proposal. All addenda will become part of the Contract Documents.

6. **CONFLICTING INFORMATION:** If any part of the plans or specifications conflict with any other part and no clarification is made by

the Department of Buildings and General Services in an addendum, the most expensive method or materials as described or suggested will be used.

7. **SUBSTITUTIONS:** To obtain approval to use unspecified products, bidders shall submit written requests at least 7 days before bid date. Requests shall clearly describe the product for which approval is asked, including all data necessary to demonstrate acceptability. If the product is acceptable, the approval will be issued in Addendum to all prime bidders on record in a manner consistent with 6. **INTERPRETATION** identified above.

8. **PROPOSALS:** Proposals shall be made on unaltered Proposal forms furnished by State of Vermont, Department of Buildings and General Services. Fill in all blank spaces. **One (1)** copy is requested. Proposal shall be signed with name typed or printed below signature. Where bidder is a corporation, Proposal must be signed with legal name of the corporation followed by the name of the State of incorporation and the legal signatures of an officer authorized to bind the corporation to a contract.

9. **BID SECURITY:** Bid Security shall be made payable to the Treasurer, State of Vermont, in the amount of five (5) percent of the Proposal sum. Security shall be bid bond issued by surety licensed to conduct business in the State of Vermont or other security as specified herein. The successful bidder's security will be retained until he has signed the Contract and furnished the required security. The Owner reserves the right to retain the security of the next three lowest bidders until the low bidder enters into contract or until 60 days after bid opening, whichever is the shorter. All other bid security will be returned as soon as practicable. If any bidder refuses to enter into a Contract, the Owner will retain his Bid Security as liquidated damages, but not as a penalty. **No checks will be accepted.**

10. **BONDS:** The Contractor will furnish the following bonds and the obtaining of these bonds is a condition precedent to the effectuation of the contract between Owner and Contractor.

Bid Bond in the amount of 5% of bid.
Guaranty Bond in the amount of 100% of the contract price.
Performance Bond in the amount of 100% of the contract price.
Payment Bond - Labor & Materials - 100% of the contract price.

All bonds are to be executed according to instructions. The Department of Buildings and General Services will furnish Bond forms.

11. **MINORITY/WOMEN BUSINESS ENTERPRISES (M/WBE):** It is the policy of the State of Vermont that M/WBE's shall have the maximum opportunity to participate in the performance of contracts financed with state funds. All Bidders are encouraged to contact M/WBE's in an effort to recruit them to submit proposals for the work or portions thereof. The contractor shall not discriminate on the basis of race, color, national origin or sexual orientation in the award and performance of subcontracts.

The Department of Buildings and General Services shall, in accordance with Executive Order #15-91, and for publicly funded capital construction projects exceeding \$50,000.00, comply with the following provisions and requirements. Upon receipt of letter of intent to award contract, the successful bidder shall submit a M/WBE Reporting Form along with certificates of insurance and other pre-contract information. The form includes space to report the name, address and phone number of the M/WBE's contacted, the trade, if their price was included in the bid proposal, and if not, the reason for rejection of their bid. The contract will not be executed until the M/WBE Form is received.

Failure to contact M/WBE's on or when projects require sub-contract work may constitute non-compliance and may result in forfeiture of future bidding privileges until resolved.

12. **PREVAILING WAGE RATE REQUIREMENTS:** *AS OF JULY 1, 2016, Vermont Prevailing Wage Rate Requirements.* Vermont law requires this project comply with the prevailing wage rate requirements set forth in 29 V.S.A. §161(2)(b)(c)(d). The full text of 29 V.S.A. § 161 (2)(b)(c)(d) is as follows:

(b) Each contract awarded under this section [29 V.S.A. § 161 (2)(b)] for any State project with a construction cost exceeding \$ 100,000.00 and which is authorized or funded in whole or in part by a capital construction act pursuant to 32 V.S.A. § 701a shall provide that all construction employees working on the project shall be paid no less than the mean prevailing wage published periodically by the Vermont Department of Labor in its occupational employment and wage survey plus an additional fringe benefit of 42 and one-half percent of wage, as calculated by the current Vermont prevailing wage survey. As used in this section, "fringe benefit" means benefits, including paid vacations and holidays, sick leave, employer contributions and reimbursements to health insurance and retirement benefits, and similar benefits that are incidents of employment.

(c) In the construction of any State project, local capable labor shall be utilized whenever practicable, but this section shall not be construed to compel any person to discharge or lay off any regular employee.

(d) Subsections (a) through (c) of this section shall not apply to maintenance or construction projects carried out by the Agency of Transportation and by the Department of Forests, Parks and Recreation.

Important Note: Certain contracts will remain subject to the mean prevailing wage rate **WITHOUT THE ADDITIONAL FRINGE BENEFIT** indicated in 29 V.S.A. § 161(b), above.

ANY CONTRACT THAT FALLS INTO ONE OF THE CATEGORIES BELOW, SHALL REMAIN SUBJECT TO THE MEAN PREVAILING WAGE REQUIREMENTS IN EFFECT PRIOR TO JULY 1, 2016:

- (a) Any contract for a State construction project that is executed prior to July 1, 2016.
- (b) Any change order or amendment, even if that change order or amendment was executed after July 1, 2016, if that change order or amendment modifies an existing contract for a state construction project when the original existing contract was executed prior to July 1, 2016.

The Vermont Prevailing Wage Requirement in effect prior to July 1, 2016 is described below:

- (b) *Each contract awarded under this section [29 V.S.A. § 161] for any State project with a construction cost exceeding \$ 100,000.00 and which is authorized or funded in whole or in part by a capital construction act pursuant to 32 V.S.A. § 701a shall provide that all construction employees working on the project shall be paid no less than the mean prevailing wage published periodically by the Vermont Department of Labor in its occupational employment and wage survey.*

General requirements for all State construction projects:

The general contractor, and all subcontractors to the general contractor on the site, shall:

- (a) Pay wages at or above the Vermont Prevailing Wage and Fringe Benefit Rate determined by the Vermont Department of Labor. A list of frequent/common occupations and required wage rates are available at: <http://www.vtmi.info/lmipub.htm#pw> .
- (b) The Vermont Prevailing Wage and Fringe Benefit Rates provided shall be posted in a prominent location or locations where they may be viewed by all employees affected by these provisions.
- (c) The Vermont Department of Labor Point of Contact information, and telephone shall be affixed to the Vermont Prevailing Wage and Fringe Benefit Rate Notice posted at the site for purposes of inquiries from employees and for reporting complaints regarding these provisions.

The complete text of 29 V.S.A. §161 is available at: <http://legislature.vermont.gov/statutes/section/29/005/00161>

- 13. **MODIFICATION AND WITHDRAWAL:** Proposals may not be modified after they are received and recorded by Department of Buildings and General Services. Bidders may withdraw Proposals at any time before bid opening, but **may not** resubmit a bid. No proposal may be withdrawn or modified after the bid opening except where the award of Contract has been delayed for beyond 60 days.
- 14. **DISQUALIFICATION:** The Commissioner of Buildings and General Services reserves the right to disqualify Proposals, before or after opening, upon evidence of collusion with intent to defraud or other illegal practices upon the part of the bidder. Furthermore, failure to substantively comply with bidding requirements may constitute non-compliance and may result in forfeiture of future bidding privileges until resolved.
- 15. **SUBMITTAL:** Submit Proposal in sealed envelope. Identify the envelope with: (1) project name, (2) name of bidder. Submit Proposals in accord with Invitation to Bid.
- 16. **OPENING:** Proposals will be opened as announced in the Invitation to Bid.
- 17. **BASIS OF BID AWARD:** Method of award will be based on Title 29, Chapter 5 § 161. Requirements on state construction projects.

The contract shall be awarded to one of the three lowest responsible bidders, conforming to the plans and specifications, with consideration being given to quantities involved, time required for delivery, purpose for which required, competency and responsibility of bidder, and his or her ability to render satisfactory service, but the commissioner of buildings and general services with the approval of the secretary of administration, shall have the right to reject any and all bids and to invite other bids.

No segregated proposals or assignments will be considered. The Contract will be awarded on the basis of the Maximum Limiting Amount, including full consideration of unit prices and alternates in the order in which they appear on Proposal form.

- 18. **EXECUTION OF CONTRACT:** The Contract or Contracts will be signed for the State of Vermont by the Commissioner of Buildings and General Services.
- 19. **TAXES:** The State is exempt from all sales and federal excise taxes. Contractors will be responsible for the payment of any sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective. Federal excise tax registration number covering taxable items will be furnished upon request. Quote less these taxes.

As required by law (32 V. S. A. §3113) the Contractor hereby certifies, under the pains and penalties of perjury, that he/she is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date the Contractor signs this contract.

State of Vermont
Department of Buildings and General Services

BID PROPOSAL

TO: STATE OF VERMONT
Agency of Administration
Department of Buildings and General Services
109 State Street
Montpelier, Vermont 05609-3001

DATE: _____

Ladies and Gentlemen:

The undersigned proposes to provide all labor, materials and equipment necessary to satisfactorily complete the FPR-GS-Design Build Heat Pump Services at 111 West Street as identified in Attachment A of this agreement. Project is located in Essex Junction, Vermont. Construction shall be in accordance with the Project Documents prepared by the Department of Forests, Parks and Recreation.

A. The undersigned acknowledges the following:

1. Basis of award shall be as specified in the "Instructions to Bidders".
2. The right of the Owner to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions.
3. They are familiar with the contents of this Proposal and that they have examined the site and accept the existing conditions as those under which the work will be done.

B. The undersigned further agrees:

1. To hold their bid open for sixty (60) days after this day of Bid Opening.
2. To accept the provisions of the "Instructions to Bidders" and the "General Conditions".
3. To enter into and execute a contract, if awarded on the basis of this proposal within ten (10) calendar days of notification of award.
4. To accomplish the work in accordance with the Bid Documents.

C. Acknowledge receipt of the following Addenda:

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

D. It is the Bidder's responsibility to thoroughly read and comply with all instructions and requirements of this bid solicitation.

E. *Bid Security in the amount of 5% is enclosed herewith.

F. Self Reporting: Worker Classification Compliance Requirement:

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00, requires bidders to comply with the following provisions and requirements.

Bidder is required to self report the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

Bidder hereby certifies that the company/individual is in compliance with the requirements as detailed in Act 54, Section 32 of the Acts of 2009.

Summary of Detailed Information	Date of Notification	Outcome

G. Subcontractor Reporting: Worker Classification Compliance Requirement:

Prior to contract execution, the successful bidder agrees to comply with Subcontractor Reporting requirements in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00 as follows:

1. Provide a list of subcontractors to be used on the job along with lists of subcontractor’s subcontractors and by whom those subcontractors are insured for workers’ compensation purposes. This is not a requirement for subcontractor’s providing supplies only and no labor to the overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired. A sample form is included in the bid package.
2. Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

STATE OF VERMONT
CONTRACTOR'S PROPOSAL

Date: _____

Maximum Limiting Amount:

The undersigned proposes to provide all labor, materials and equipment necessary to satisfactorily complete the FPR-GS-Design Build Heat Pump Services at 111 West Street in Essex Junction, Vermont in accordance with the Project Documents for the **Maximum Limiting Amount of:**

MAXIMUM LIMITING AMOUNT: _____
(Written)
(\$ _____)
(Figures)

The undersigned further agrees:

1. To complete the work by June 15, 2018 with a substantial completion date of June 1, 2018.
2. The amount of compensation paid to the undersigned for extra work and change orders in one of the following manners as directed by the Owner.
 - a) A price agreed upon between the Owner and the Contractor.
 - b) A price determined by adding 15% for overhead and profit to the total direct cost of any extra work excluding unit pricing.
 - c) A price determined by extending unit price work above.

Corporate Seal (If Bidder is a Corporation)

Contractor Name: _____ Contact Name: _____

State of Corporation: _____ VT Business Account #: _____

Address: _____ Fax Number: _____

Telephone: _____

E-Mail: _____

By: _____ Name: _____
Signature (Bid Not Valid Unless Signed) (Type or Print)

NOTE: If Bidder is a Partnership, give full names of all Partners.

END OF PROPOSAL

PROJECT NAME:
CONTRACT #:
DATE:

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

Subcontractor Reporting Form

This form must be completed in its entirety and submitted prior to contract execution and updated as necessary and provided to the State as additional subcontractors are hired.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires bidders to comply with the following provisions and requirements.

Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured for workers' compensation purposes. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

Subcontractor	Insured By		Subcontractor's Sub	Insured By

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

Send Completed Form to: Office of Purchasing & Contracting
109 State Street
Montpelier, VT 05609-3001
Attention: Contract Administration

**State of Vermont
Department of Buildings and General Services**

MINORITY/WOMEN BUSINESS ENTERPRISES (M/WBE) REPORTING FORM

It is the policy of the State of Vermont that M/WBE's shall have the maximum opportunity to participate in the performance of contracts financed with state funds. All Bidders are encouraged to contact M/WBE's in an effort to recruit them to submit proposals for the work or portions thereof. The contractor shall not discriminate on the basis of race, color, national origin or sexual orientation in the award and performance of subcontracts.

Company Name: _____ Contact Person: _____

Address: _____

Phone: _____ Fax: _____ Federal ID: _____

The Department of Buildings and General Services shall, in accordance with Executive Order #15-91, and for publicly funded capital construction projects exceeding \$50,000.00, comply with the following provisions and requirements. Upon receipt of letter of intent to award contract, the successful bidder shall submit a MWBE Reporting Form along with certificates of insurance and other pre-contract information. The form includes space to report the name, address and phone number of the MWBE's contacted, the trade, if their price was included in the bid proposal, and if not, the reason for rejection of their bid. The contract will not be executed until the MWBE Form is received.

Failure to contact MWBE's on or when projects require sub-contract work may constitute non-compliance and may result in forfeiture of future bidding privileges until resolved.

MWBE Company Contacted	Trade	Was Quote Received? YES/NO	Did you do business with them? YES/NO	If no, reason	MWBE Contact Name and Phone Number

See Back of Sheet for Additional Contact Information

The undersigned certifies that the above information is a complete and accurate summary of the recruiting effort put forth to encourage the participation of M/WBE's in the performance of work financed by State funds.

Signature: _____ Title: _____

STATE OF VERMONT
AGENCY OF ADMINISTRATION
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
MONTPELIER, VERMONT

INSTRUCTIONS

BID•PERFORMANCE•PAYMENT•GUARANTY BONDS

1. This form shall be used whenever a bond is required. There shall be no deviation from this form except as authorized by the Department Commissioner.
2. The bond shall be procured from an insurance company authorized to do business in the State of Vermont.
3. The name, including full legal name and residence of each individual party to the bond, shall be inserted in the body thereof, and each such party shall sign the bond with their usual signature on the line opposite the scroll seal.
4. If the principals are partners, their individual names shall appear in the body of the bond, with the recital that they are partners composing a firm, naming it, and all the members of the firm shall execute the bond as individuals.
5. The signature of a witness shall appear in the appropriate place, attesting the signature of each individual party to the bond.
6. If the principal or surety is a corporation, the name of the state in which incorporated shall be inserted in the appropriate place in the body of the bond, and said instrument shall be executed and attested under the corporate seal as indicated in the form.
7. The official character and authority of the person or persons executing the bond for the principal if a corporation, shall be certified by the secretary or assistant secretary, according to the form attached thereto. In lieu of such certificate there may be attached to the bond copies of as much of the records of the corporation as required to show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.
8. The date of the performance and payment bonds must be no later than the date of the instrument for which it is given.
9. The guaranty bond is for a period of one year and begins on the date of substantial completion established by the architect or project manager and approved by the Department Commissioner.

STATE OF VERMONT
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
PURCHASING AND CONTRACT ADMINISTRATION DIVISION
MONTPELIER VT 05633

BID BOND

Know All Men By These Presents, that we, as principal, and
..... as surety,
are held and firmly bound unto the State of Vermont, hereinafter called the State, in the penal sum of
..... Dollars
Lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors,
administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal has submitted the accompanying bid, dated
....., 2016, for

Now, therefore, if the principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no
period be specified, within sixty (60) days after said opening, and shall within the period specified therefore, or if no period be specified, within
ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the State, in accordance with the bid as
accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such
contract, or in the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bond
within the time specified, if the principal shall pay the State the difference between the amount specified in said bid and the amount for which the
State may procure the required work and/or supplies, if the later amount be in excess of the former, then the above obligation shall be void and of
no effect, otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this
..... day of, 2016, the name and corporate seal of each corporate party being hereto
affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

in presence of-

.....	..... (Seal)
	(Individual Principal)
.....
(Address)	(Business Address)
.....	..... (Seal)
	(Individual Principal)
.....
(Address)	(Business Address)
.....
(Address)	(Business Address)

Attest:

.....
	(Corporate Principal)
.....
	(Business Address)
.....	.....(Affix)
	Corporate Seal)

Attest:

.....
	(Corporate Surety)
.....
	(Business Address)
.....	.....(Affix)
	Corporate Seal)

STATE OF VERMONT
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
PURCHASING AND CONTRACT ADMINISTRATION
MONTPELIER VT 05633

PERFORMANCE BOND

Know All Men By These Presents, that we, as principal,
and
..... as surety,
are held and firmly bound unto the State of Vermont, hereinafter called the State, in the penal sum of
..... Dollars
for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors,
jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, which contract is by
reference made a part hereof, with the State, dated, 2016, for

Now, therefore, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions,
and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the State,
with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly
perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of
said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be
void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this
..... day of, 2016, the name and corporate seal of each corporate party
being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

in presence of-

.....	..... (Seal)
	(Individual Principal)
.....
(Address)	(Business Address)
.....	..... (Seal)
	(Individual Principal)
.....
(Address)	(Business Address)
.....
(Address)	(Business Address)

Attest:

(Corporate Principal)

(Business Address)

..... By(Affix)
Corporate Seal

Attest:

(Corporate Surety)

(Business Address)

..... By(Affix)
Corporate Seal

STATE OF VERMONT
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
PURCHASING AND CONTRACT ADMINISTRATION DIVISION
MONTPELIER VT 05633

PAYMENT BOND

(Labor and Material)

Know All Men By These Presents, that we, as principal, and
.....
..... as surety,
are held and firmly bound unto the State of Vermont, hereinafter called the State, in the penal sum of
..... Dollars
for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly
and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, which contract is by reference
made a part hereof, with the State, dated, 2016, for

Now, therefore, if the principal shall promptly make payment to all persons supplying labor and material in the prosecution of
the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice
of such modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this
..... day of, 2016 the name and corporate seal of each corporate party being
hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

in presence of-

..... (Address)	..... (Seal) (Individual Principal) (Business Address)
..... (Address)	..... (Seal) (Individual Principal) (Business Address)
..... (Address)	..... (Business Address)

Attest:

.....	..... (Corporate Principal) (Business Address)
.....	By .....(Affix) Corporate Seal

Attest:

.....	..... (Corporate Surety) (Business Address)
.....	By .....(Affix) Corporate Seal

STATE OF VERMONT
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
PURCHASING AND CONTRACT ADMINISTRATION
MONTPELIER VT 05633

GUARANTY BOND

Know All Men By These Presents, that we, as principal, and
.....
..... as surety,
are held and firmly bound unto the State of Vermont, hereinafter called the State, in the penal sum of
..... Dollars
for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and
severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, which contract is by reference made
a part hereof, with the State, dated, 2016, for

Now, therefore, the condition of the above obligation is such, that if the said principal will make good any faults or defects in the
work, arising from improper or defective workmanship or materials, undertaken in said contract and discovered on or before
....., then this obligation shall be null and void; otherwise it shall remain in
full force and effect.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this
..... day of, 2016, the name and corporate seal of each corporate party being hereto
affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

in presence of-

..... (Seal)
(Individual Principal)

..... (Address) (Business Address)

..... (Seal)
(Individual Principal)

..... (Address) (Business Address)

..... (Address) (Business Address)

Attest:

.....
(Corporate Principal)

.....
(Business Address)

..... By(Affix)
Corporate Seal

Attest:

.....
(Corporate Surety)

.....
(Business Address)

..... By(Affix)
Corporate Seal

STATE OF VERMONT
AGENCY OF ADMINISTRATION
BUILDINGS AND GENERAL SERVICES
MONTPELIER, VERMONT

CERTIFICATE AS TO CORPORATE PRINCIPAL

I,....., certify that I am
the.....secretary of the Corporation
named as principal in the within bond, that.....
who signed the said bond on behalf of the principals was the.....of said
corporation; that I know his signature, and his signature, and his signature thereto is genuine; and that said bond was
duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

(Corporate)
(Seal

STATE OF VERMONT STANDARD CONTRACT FORM FOR DESIGN-BUILD SERVICES

1. **Parties.** This is a contract for services between the State of Vermont, Department of Buildings and General Services (hereafter called “State”), and **XXX**, with its principal place of business in **XXX**, (hereafter called “Contractor”). Contractor’s form of business organization is **incorporated, limited liability company, sole proprietor, etc.** It is the contractor’s responsibility to determine if, by law, the contractor is required to be registered with the Vermont Department of Taxes for the purposes of filing required Vermont taxes.
2. **Subject Matter.** The subject matter of this contract is generally on the subject of design and construction (“design-build”) services. Services to be provided by the contractor are described in Attachment A.
3. **Maximum Limiting Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed **\$XXX**.
4. **Contract Term.** The period of contractor’s performance shall commence on **XXX** and end one year after the Date of Final Completion. The Date of Substantial Completion shall be **XXX**, the date of Final Completion shall be **XXX**, and the Date of Contract Completion shall be **XXX**.
5. **Prior Approvals.** If approval by the Attorney General’s Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.
 - Approval by the Attorney General’s Office is required.
 - Approval by the Secretary of Administration **is not required. (IS REQUIRED IF OVER \$500,000.00 OR IF THE PROJECT IS SOLE SOURCE AND \$10,000 OR MORE.)**
 - Approval by the CIO/Commissioner DII is not required.
6. **Amendment.** This agreement represents the entire agreement between the parties; No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** Cancellation of this contract shall be done in a manner consistent with Article 14 of Attachment D.
8. **Attachments.** This contract consists of **XXX** pages including the following attachments which are incorporated herein:

ATTACHMENT A: Scope of Work

ATTACHMENT B: Payment Provisions

ATTACHMENT C: Standard State Provisions for Contracts and Grants, a preprinted form (revision dated 07/01/2016), except that the following numbered paragraphs are hereby deleted in their entirety: 8.

Insurance

ATTACHMENT D: General Conditions for Design Build Contracts

ATTACHMENT E: Project Manual Technical Specifications

You will need to list the various specs from the INDEX

ETC.

Addendum No. 1 dated XXX

Addendum No. 2 dated XXX

ETC.

ATTACHMENT F: PLANS

You will need to list the various plans from the INDEX

ETC.

ETC.

ATTACHMENT G: Supplementary General Conditions **REMOVE IF NOT APPLICABLE**

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:
- 1) Standard Contract
 - 2) Attachment C (Standard Contract Provisions for Contracts and Grants)
 - 3) Attachment D (General Terms and Conditions for Construction Contracts)
 - 4) Attachment E
 - 5) Attachment G Supplementary General Conditions **REMOVE IF NOT APPLICABLE**
 - 6) Attachment F
 - 7) Attachment A
 - 8) Attachment B
10. **Plan Security Certification.** Contractor acknowledges that the plans pertaining to this project have been declared exempt from public record inspection for security reasons and have been disclosed to Contractor as per 1 V.S.A. §317(c)(32) for the performance of the Work specified herein. Contractor hereby expressly acknowledges and agrees to disclose plans only to a licensed architect, engineer, or Contractor who is bidding to work on, or actually performing work on, buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the state and specifically related to this project. Furthermore, Contractor agrees to abide by BGS Administrative Policy # 35 and any existing or future directives set forth by the State concerning the copying or distribution of the plans. Fraud, misrepresentation, falsification, or concealing or covering up material facts relating to compliance with these directives may result in one or more of the following actions: termination of the contract(s), suspension of bidding privileges, withholding, deducts, forfeiture of security bonds, and criminal prosecution punishable by imprisonment of up to five years and/or up to a \$10,000.00 fine as per 13 V.S.A. §3016.
11. **Laws.** Contractor shall comply with all public laws, ordinances, and requirements respecting the work, obtain and pay for all required permits and shall comply with regulations of any insurance company which issues a policy on any part of the work or site.

Contractor shall ensure it becomes acquainted with limits of the property or right-of-way of the State and shall not trespass on other property. All work shall be done in such a manner as not to interfere with the State's operating functions. Contractor and its employees, consultants and subcontractors shall familiarize themselves and comply with all posted rules and regulations applicable to the project.

12. **Non-Collusion.** Contractor certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Contractor has not engaged in any collusion concerning the bid process resulting in this Agreement. Collusion is defined as entering "into any agreement, contract, combination in the form of trusts or otherwise, or conspiracy to engage in price fixing, bid rigging, or market division or allocation of goods or services between or among persons." 9 V.S.A. §2451a(h). Persons engaged in collusion may face civil and criminal liability, including criminal penalties of "a fine of not more than \$100,000.00 for an individual or \$1,000,000.00 for any other person or . . . imprisonment not to exceed five years, or both." 9 V.S.A. §2453a(e). In addition to any civil or criminal action against Contractor, the State also reserves the right to immediately cancel this Agreement if the State suspects the Contractor is engaged in collusion. **In addition to any civil or criminal action against Contractor, the State also reserves the right to immediately cancel this Agreement if the State suspects the Contractor engaged in collusion.**

13. **Employment of Women and Minorities and Fair Employment Practices.** The State of Vermont encourages an increase in work force participation rates for women and minorities in all aspects of

publicly funded capital construction projects. The Contractor is encouraged to seek out and employ qualified women and minorities for work covered under this contract. The following shall apply when the total contract exceeds \$50,000.00, and Contractor shall require all first-tier subcontractors to comply with these requirements when their contract exceeds \$50,000.00, and Contractor shall require all first-tier subcontractors to comply with these requirements when such subcontractor's contract exceeds \$50,000.00:

- a. At the conclusion of the project, Contractor must complete the Construction Employment Report and submit it to the Department of Buildings and General Services for recording. A complete description and dollar value of the work or supplies provided, and percentage value of the overall construction contract for each such M/WBE transaction must be included. Final payment will not be made until this requirement has been satisfied.

Contractor agrees to comply with all the requirements of Title 21 V.S.A., Chapter 5, Subchapter 6 relating to fair employment practices and agrees further to include a similar provision in any and all subcontracts. A link to 21 V.S.A. Chapter 5, Subchapter 6 is provided:

<http://legislature.vermont.gov/statutes/section/21/005/00495>

14. **Vermont Prevailing Wage Rate Requirements.** Vermont law requires this project comply with the prevailing wage rate requirements set forth in 29 V.S.A. §161(2)(b)(c)(d). The full text of 29 V.S.A. § 161 (2)(b)(c)(d) is as follows:

(b) Each contract awarded under this section [29 V.S.A. § 161] for any State project with a construction cost exceeding \$ 100,000.00 and which is authorized or funded in whole or in part by a capital construction act pursuant to 32 V.S.A. § 701a shall provide that all construction employees working on the project shall be paid no less than the mean prevailing wage published periodically by the Vermont Department of Labor in its occupational employment and wage survey plus an additional fringe benefit of 42 and one-half percent of wage, as calculated by the current Vermont prevailing wage survey. As used in this section, "fringe benefit" means benefits, including paid vacations and holidays, sick leave, employer contributions and reimbursements to health insurance and retirement benefits, and similar benefits that are incidents of employment.

(c) In the construction of any State project, local capable labor shall be utilized whenever practicable, but this section shall not be construed to compel any person to discharge or lay off any regular employee.

(d) Subsections (a) through (c) of this section shall not apply to maintenance or construction projects carried out by the Agency of Transportation and by the Department of Forests, Parks and Recreation.

Contractor shall:

- (a) Pay wages at or above the Vermont Prevailing Wage and Fringe Benefit Rate determined by the Vermont Department of Labor. A list of frequent/common occupations and required wage rates are available at: <http://www.vtlmi.info/lmipub.htm#pw> .
- (b) The Vermont Prevailing Wage and Fringe Benefit Rates provided shall be posted in a prominent location or locations where they may be viewed by all employees affected by these provisions.
- (c) The Vermont Department of Labor Point of Contact information, and telephone shall be affixed to the Vermont Prevailing Wage and Fringe Benefit Rate Notice posted at the site for purposes of inquiries from employees and for reporting complaints regarding these provisions.

Contractor shall also ensure that in each of its construction subcontracts it requires each subcontractor on this project to pay wages at or above the Vermont Prevailing Wage and Fringe Benefit Rate determined by the Vermont Department of Labor.

The complete text of 29 V.S.A. §161 is available at:
<http://legislature.vermont.gov/statutes/section/29/005/00161>

15. Worker's Classification. State Contracts Compliance Requirements: The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for project costs exceeding \$250,000.00, Contractor shall comply with the following:

For construction and transportation projects over \$250,000.00, Contractor shall utilize a payroll process by which during every pay period Contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the jobsite, and similar information for the subcontractors regarding their subcontractors shall also be provided by Contractor to the Department of Labor and to the Department of Financial Regulation, upon request, and shall be available to the public.

16. Debarment by the Department of Labor (DOL) or the Department of Financial Regulation. The State of Vermont reserves the right to terminate this contract with fifteen (15) days notice to Contractor, upon determination that Contractor or a subcontractor to Contractor has been debarred by the Department of Labor (DOL) or the Department of Financial Regulation. Additionally, the State of Vermont reserves the right to withhold payment and / or terminate this Contract if Contractor fails to provide payroll records requested by the DOL and the Department of Financial Regulation within thirty (30) days of receipt of the request from DOL or the Department of Financial Regulation.

17. Miscellaneous. Paragraph headings are inserted for convenience only and are not to be relied upon for content. Contractor shall ensure that any and all agreements with subcontractors conform to the requirements contained herein and that subcontractors abide by all applicable provisions of this Contract including, but not limited to, the requirement that Contractor has complied with and shall continue to comply with all requirements with respect to qualification to do business in Vermont and registration with the Office of the Secretary of State. If all or a portion of the project is to be subject to a subcontract, it shall be the responsibility of the Contractor to determine that the subcontractor has complied with the above requirements of registration and qualification as well as all other applicable provisions of this Contract.

18. Waste Reduction Planning. It is the intent of the State of Vermont to significantly reduce the amount of construction debris going into the total waste stream. Contractor shall prepare and submit a Construction Site Waste Reduction Plan prior to beginning work on the project. A sample plan is available at: <http://www.anr.state.vt.us/dec/wastediv/recycling/CandD.htm>. Failure to comply with this provision or a failure to comply with the plan itself will result in withholding of general conditions' money from Contractor's monthly requisition until Contractor has rectified the situation and is in full compliance with these provisions.

MASTER COPY DISTRIBUTED: _____
Contractor, Accounting, DFM, RD, PM, ETC.

DEPT ID:
FUND SOURCE:

PROJECT #:
BUILDING #:
CONTRACT #:

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

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party’s indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

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

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired

in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and

liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

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

25. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

26. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

27. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

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

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

29. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

30. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

31. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

32. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions)

**Vermont Agency of Natural Resources, Waste Management Division
Construction Site Waste Reduction Plan**

Company Name: _____

Contact Person: _____

Address: _____

Telephone #: _____

Project Location:

Project Description:

(Demolition/renovation/new construction, square footage, commercial/residential/industrial, timeframe, etc.)

Job-site Planning Worksheet
Attach any extra sheets as needed

Waste Prevention Planning - What steps have been taken to prevent waste from being generated during the project? This could include using designs that favor standard sizes or specifying building techniques that incorporate fewer materials. On job sites, it could include a central location for all wood cutting to facilitate use of the cut-off pieces. It could also include asking suppliers to take back excess materials, removing salvageable materials before construction/renovation/demolition or including specifications requiring subcontractors to prevent waste.

Education Plan - Describe how the Waste Management Program will be communicated to construction crews and subcontractors and how contractors will insure that subcontractors abide by the Plan.

Contract specifications - Include any subcontractor waste reduction specifications you incorporated into your contract such as requirements for reusing or recycling certain materials. The web site at: <http://www.tjcog.dst.nc.us/cdwaste.htm> has sample language for all stages of construction/demolition/renovation. Describe how these contract specifications have been enforced.

It is important for large projects to specify its waste management goals in subcontractor agreements. This assures that the expectations and procedures are communicated clearly to everyone. The following is a sample specification in a subcontractor agreement:

"The subcontractor will make a good faith effort to reduce the amount of waste generated on the job-site and recycle material as per the contractor's Waste Reduction Plan. The subcontractor will follow the designated handling procedures for each type of waste generated on-site and provide documentation to verify material reuse, recycling, and disposal as indicated in the waste Reduction Plan."

Reprinted from the King County Washington, Construction Recycling Program

Reuse & Recycling Worksheet – page 2 of 3

Material	Estimated Quantity	End Markets - For a listing of Vermont salvage and recycling markets check out the web site at: www.anr.state.vt.us/dec/wastediv/recycling/c&d.htm or call 802-241-3477 or 241-3481. When researching recycling options - ask the recyclers what they are doing with the wastes.	Handling/Site Management - how materials are to be removed, separated, stored and hauled for reuse or recycling.
<i>Sample listing: Cardboard</i>	<i>one 3 cy dumpster</i>	<i>Recycled thru ABC Hauling.</i>	<i>A covered cardboard dumpster will be placed next to the trash dumpster. Will call hauler when full.</i>
Salvageable Items or used building materials such as windows, doors, moldings, fixtures, bathroom fixtures, etc. (Please list items separately)			
Asphalt roofing shingles			
Asphalt			
Brick			
Cardboard			

Reuse & Recycling Worksheet page 3 of 3

Material	Estimated Quantity	End Markets - For a listing of Vermont salvage and recycling markets check out the web site at: www.anr.state.vt.us/dec/wastediv/recycling/c&d.htm or call 802-241-3477 or 241-3481. When researching recycling options - ask the recyclers what they are doing with the wastes.	Handling/Site Management - how materials are to be removed, separated, stored and hauled for reuse or recycling.
"Clean" Wood			
Concrete			
Metal			
Plaster/Drywall			
"Treated/Painted" Wood			
Other			

Contract # _____

Amendment # _____

STATE OF VERMONT
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Department of Buildings and General Services (the "State") and **CONTRACTOR NAME**, with a principal place of business in **CITY, STATE** (the "Contractor") that the contract between them originally dated as of **CONTRACT START DATE**, Contract # **NUMBER**, as amended to date, (the "Contract") is hereby amended as follows:

REMOVE/EXPAND/REVISE THE BELOW AMENDMENT ITEMS, AS APPLICABLE

- I. **Maximum Amount.** The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$ _____ to \$ _____, representing an increase / a decrease of \$ _____.
- II. **Contract Term.** The Contract end date, wherever such reference appears in the Contract, shall be changed from **OLD END DATE** to **NEW END DATE**. **[REMOVE/REVISE FOLLOWING SENTENCE AS APPLICABLE]** The Contract Term may be renewed for one additional one-year period at the discretion of the State.
- III. **Attachment A, Scope of Services.** The scope of services is amended as follows:
EXAMPLE: Section ___ of Attachment A [is amended by the addition of the following requirements] [OR] [is hereby deleted in its entirety and replaced as set forth below /or/ in the attachment to this Amendment].
- IV. **Attachment B, Payment Provisions.** The payment provisions are amended as follows:
EXAMPLE: Section ___ of Attachment B [is amended by the addition of the following requirements] [OR] [is hereby deleted in its entirety and replaced as set forth below /or/ in the attachment to this Amendment].
- V. **Attachment C, Standard State Provisions for Contracts and Grants.** Attachment C is hereby deleted in its entirety and replaced by the Attachment C July 1, 2016 attached to this Amendment.

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor

Contract # _____

Amendment # _____

Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

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

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

[Remainder of Page Intentionally Left Blank]

SAMPLE

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

STATE OF VERMONT

CONTRACTOR NAME

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE

MINORITY/WOMEN BUSINESS ENTERPRISES (M/WBE)

CONSTRUCTION CONTRACT REPORT

Project Name: _____

Contract No.: _____ **Contract Amount:** _____ **Contract Date:** _____

Contractor's Name, Address, Telephone and Facsimile Numbers:

Telephone Number: _____

FAX Number: _____

The following information on Minority and Women Business Enterprises subcontracted on this project is provided to the Vermont Department of Buildings and General Services in accordance with Paragraph 15, Minority and Women Business Enterprises (M/WBE), of the Contract between the State of Vermont and the General Contractor for the above-mentioned project.

Minority/Women Business Enterprises Name, Address & Telephone Number	Trade or Materials Supplied	Subcontract Value	Percentage of Total Project

Signature: _____

Name (please print): _____

Title: _____

Construction Employment Report

01/06/2011

FOR BGS USE ONLY: CONTRACT NO.: _____

DEPARTMENT OF BUILDINGS AND GENERAL SERVICES
TWO GOVERNOR AIKEN AVENUE
MONTPELIER, VERMONT

PROJECT TITLE: _____

NAME/ADDRESS/TELEPHONE & FAX NUMBER OF CONTRACTOR:

TELEPHONE NO.: () _____

FAX NO.: () _____

CHECK ONE:

General Contractor

First-tier Subcontractor

The following information is provided to the Vermont Department of Buildings and General Services in accordance with Paragraph 14, Employment of Women and Minorities, of the Contract between the State and the General Contractor for the above-referenced project.

<u>Applicant's Name, Address & Phone Number</u>	<u>Employee Group *1</u>	<u>Trade *2</u>	<u>Action Taken</u>

*1. Employee Group – Please select from the following three groups:

- MM – Minority Male
- WF – White Female
- MF – Minority Female

*2. Trade – Specify type of trade, i.e., electrical, mechanical, carpentry, masonry, etc.

**STATE OF VERMONT
STANDARD FORM**

GENERAL CONDITIONS FOR DESIGN BUILD CONTRACTS (March 2017)

The following general conditions are for use with DESIGN BUILD construction contracts with the State of Vermont, administered through the Department of Buildings and General Services.

These general conditions will be attached to, and become part of, the Contract Documents.

If there is a conflict between the terms and conditions stated in these general conditions and the terms and conditions contained in the CONTRACT FORM FOR DESIGN-BUILD SERVICES, the terms of the CONTRACT FORM FOR DESIGN-BUILD SERVICES control.

ARTICLE 1: CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 The term “CONTRACT FORM FOR DESIGN-BUILD SERVICES” refers to the specific agreement between the State of Vermont and a particular contractor whereby the State and the Contractor identify, explain and agree to the specific contractual obligations of each party and identify the nature and scope of a particular project.

1.1.2 THE CONTRACT DOCUMENTS

The Contract Documents consist of the CONTRACT FORM FOR DESIGN-BUILD SERVICES, the Conditions of the Contract (General, Supplementary and other Conditions), performance documents including: Drawings, Specifications, and all Addenda issued prior to bid opening and any change orders after execution of the Contract. The Contract Documents include the Request for Proposals (RFP) and the selected Contractor’s response to the State’s RFP.

1.1.3 THE CONTRACT

The Contract Documents form the contract for design and construction. This contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. The contract may only be amended by

change order. The Contract Documents shall not be construed to create any contractual relationship of any kind between any consultant and the Contractor; the Contractor is responsible for any and all consultants including Engineers, Architects, or otherwise, all of whom shall be obligated to comply with the Contract Documents. Nothing contained in the Contract Documents shall create any contractual relationship between the State and any Design Professional or any Subcontractor or Sub-Subcontractor, including the Contractor's designer(s) and consultant(s).

1.1.4 THE WORK

The Work comprises the completed design, permitting and supporting documentation, construction, and commissioning required by the Contract Documents and includes all labor necessary to produce such construction and commissioning, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.5 THE PROJECT

The Project is the total design, construction, and commissioning of which the Work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION & INTENT

1.2.1 The CONTRACT FORM FOR DESIGN-BUILD SERVICES will be signed in duplicate by the State and Contractor.

1.2.2 By executing the Contract, the Contractor represents that it has visited the site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as, if required by all. Work not covered in the Contract Documents will not be required unless it is consistent with the Contract Documents and is reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

All drawings, specifications, and all other project-related documents, including shop drawings and calculations, prepared at any time in connection with the Project, shall, upon payment for those particular services, become the sole property of the State and may not be copyrighted or resold by the Contractor.

ARTICLE 2: DESIGN PROFESSIONAL

2.1 DEFINITION

The term “Design Professional,” as used in this contract means a person, or entity, lawfully licensed to practice architecture or a person or entity lawfully licensed to provide professional engineering services who has either been retained by the Contractor or works as an employee of the Contractor to perform services detailed in the CONTRACT FORM FOR DESIGN-BUILD SERVICES. The term “Design Professional” means the architect or engineer, or their authorized representative. Architects may not be used to perform engineering services, and engineers may not be used to practice architecture under this contract.

2.2 RESPONSIBILITIES

The Contractor acknowledges and agrees that:

2.2.1 All Design Professionals shall provide professional services for the Project utilizing their requisite skills, abilities, and judgment reasonably and without neglect. Specifically, each firm or individual employed by the Contractor must be registered with the Secretary of State and properly licensed to practice in Vermont. These firms and individuals must design the Project in compliance with all federal, state, and local building codes in effect at the time including any and all permit conditions that may be imposed by authorities having jurisdiction.

2.2.2 The Contractor shall retain the Design Professionals set forth in its proposal, in agreement with the State. Any change of Design Professional must be approved by the State at least thirty days in advance of the requested change.

2.2.3 All Design Professionals shall act with a reasonable and professional standard of care. Additional costs to the Project caused by inconsistencies, errors, or omissions outside this standard of care shall be subject to the provisions of Subparagraph 4.2.5.

2.2.4 The Design Professionals, in collaboration with the Contractor, shall work with jurisdictional authorities required to approve the Construction Documents and the entities providing utilities to the project. The Design Professionals shall respond to authorities’ requirements as well as notify the Contractor and the Project Manager of potential conflicts.

2.3 ADMINISTRATION OF THE CONTRACT

The Contractor acknowledges and agrees that:

2.3.1 Design Professionals will not be responsible for the administration of the Contract unless designated to do so by the Contractor.

2.3.2 As part of the obligations of the Contractor, all Design Professionals will visit the site at intervals appropriate to the stage of construction to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Determining the frequency, duration, and type of on-site inspections shall be the responsibility of the Contractor; however, all Design Professionals are obligated on the basis of their professional expertise to keep the Contractor

informed of the progress of the Work and to ensure all Work conforms to the Contract Documents. The Contractor recognizes and understands that all its Design Professionals have an obligation to assist the Contractor to identify deficiencies in design, construction, and commissioning.

2.3.3 The Design Professional will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay.

2.3.4 The Contractor shall prepare Proposed Change Orders in accordance with the Contract Documents and forward to the Project Manager for approval.

ARTICLE 3: OWNER ("STATE")

3.1 DEFINITION

3.1.1 The State of Vermont, by and through the Department of Buildings and General Services, is the Owner and is the entity identified as "State" in the CONTRACT FORM FOR DESIGN-BUILD SERVICES and throughout the Contract Documents.

3.1.2 The term "Project Manager" refers to the employee of the State who has been assigned responsibility for overseeing and managing the proper and timely implementation of the project. This person will be the sole point of contact between the Contractor and the State for the Project. The Project Manager is the State's representative who has authority to bind the State with respect to all matters requiring the State's approval or authorization.

3.1.3 The term "Clerk of the Works" refers to an individual retained by the State to provide inspection and monitoring work on behalf of the State and is solely responsible to the State. The Project Manager may secure a Clerk of the Works at the State's discretion.

3.2 RESPONSIBILITIES

3.2.1 The Project Manager will determine the initial dates of Substantial Completion, Final Completion, and Contract Completion. These dates may thereafter be adjusted only by Change Order.

3.2.2 The State shall furnish all available surveys describing the physical characteristics, legal limitations and known utility locations for the site of the Project, and a legal description of the site. The Contractor shall be responsible for verifying any and all utility locations.

3.2.3 For projects with existing buildings, the State shall furnish all available plans and reports of existing conditions. The Contractor shall be responsible for verifying all existing conditions.

3.2.4 For projects involving existing buildings, the State may, at its discretion, continue to provide existing heat, electricity, water, and sewer services during construction.

3.2.5 Except as provided in Subparagraph 4.10.1, the State shall secure and pay for necessary approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities. In all cases, the Contractor shall provide all professional design, documentation, and form completion required for these approvals, easements, assessments, and charges except for legal counsel.

3.2.6 The Contractor and its Design Professionals shall be entitled to rely upon the accuracy of reports and tests provided by the State.

3.2.7 The State shall secure for itself such legal, accounting, and insurance counseling services as may be necessary for the Project and such auditing services as the State may require.

3.2.8 Information or services under the State's control shall be furnished by the State with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.9 The State shall coordinate the services of its own consultants. Upon the Contractor's request, the State shall provide copies of the contracts between the State and its consultants. The State shall require its consultants to maintain professional liability insurance and/or other insurance appropriate to the service provided.

3.2.10 The foregoing are in addition to any other duties and responsibilities of the State enumerated in the Contract Documents including those responsibilities described in Articles 7, 9 and 11 of this agreement.

3.3 ADMINISTRATION OF THE CONTRACT

3.3.1 The Project Manager is responsible for the administration of the Contract.

3.3.2 If a Clerk is used for the Project, the Clerk shall make continuous and complete on-site inspections of the work performed on the Project, to the extent reasonable under all the circumstances. The on-site inspection of the work performed and any reports prepared by the Clerk(s) will be made available to the Contractor, however the use of the Clerk's reports does not relieve the Contractor from its obligations. The services of the Clerk shall not relieve the Contractor or its Design Professionals from their obligation to exercise due diligence and ensure that the Work has progressed to the point indicated and that the quality of work is in accordance with the Contract Documents.

3.3.3 The State shall review and approve all of the Contractor's work in a timely fashion.

ARTICLE 4: CONTRACTOR

4.1 DEFINITION

The Contractor is the person or entity identified as such in the CONTRACT FORM FOR DESIGN-BUILD SERVICES and is referred to throughout the Contract Documents as Contractor. The Term Contractor means the Contractor or its authorized representative.

4.2 GENERAL RESPONSIBILITIES

4.2.1 Contractor and its employees, consultants, and subcontractors shall comply with any applicable professional licensing requirements for this project's location.

4.2.2 At the initiation of this contract, the Contractor shall designate in writing its representative who is authorized to act on the Contractor's behalf with respect to this Project.

4.2.3 Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. All aspects of the Project shall be subject to the inspection and approval of the State.

4.2.4 Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. All communications shall be in writing when made or shall be confirmed in writing, by the Contractor, within twenty-four (24) hours of the communication.

4.2.5 Contractor shall be responsible to the State for the acts and omissions of its employees, design professionals, consultants, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

4.2.6 Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents by inspections, tests or approvals required or performed under Paragraph 15.7 by persons other than the Contractor.

4.2.7 Contractor shall adequately protect the project, adjacent property, and the public, shall be responsible for any damage or injury due to the Contractor's act or neglect, and shall hold the State harmless in respect thereto.

4.2.8 Contractor shall keep the premises free from liens arising out of or from the Project.

4.2.9 Contractor's superintendent, consultants, subcontractors, and key personnel may not be changed on the project without approval of the State.

4.3 PROGRESS SCHEDULE AND REPORTS

4.3.1 The Contractor, immediately after being awarded the contract, shall prepare and submit for the State's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. This information shall be submitted in a Gantt chart format and shall include Substantial Completion, Final Completion, and End of Contract Term milestones. This schedule shall identify periods of time allowed for the State's and jurisdictional authorities' review.

4.3.2 The Contractor shall update the State monthly on the progress of the Work by submitting an updated Gantt chart for the Project, an updated list of issues not on the chart requiring action,

and an updated Schedule of Values with percentages of work completed.

4.4 COMMUNICATIONS

The State uses an information management system called Submittal Exchange, at the discretion of the State. If Submittal Exchange is used for this project, the Contractor is responsible for training its consultants, employees, and subcontractors for the system's use. The Contractor and its consultants, employees, and subcontractors are responsible for submitting, reviewing, and approving all required items in a timely manner.

4.5 DESIGN OF THE WORK

4.5.1 At the beginning of the project, the Contractor shall confirm that the State's criteria comply with applicable laws, statutes, codes, and ordinances. The Contractor shall promptly notify the State of any conflicts.

4.5.2 The Contractor shall coordinate and conduct meetings with the State and its Design Professionals to review and evaluate the State's criteria for design, including its program of functions and spaces. The preliminary evaluation shall include possible alternatives to design and construction of the Project and include the Contractor's recommendations, if any, for accelerated construction including phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

4.5.3 The State must approve the final criteria, the design and construction approach, preliminary cost information and schedule, and other presented considerations before the Contractor may proceed with Preliminary Design.

4.5.4 Preliminary Design Phase Upon approval, the Contractor shall prepare and submit a preliminary design to the State. The preliminary design shall include a report updating the State's criteria for design, building plans, elevations, and sections, site plan, preliminary structural and systems designs, and outline specifications. The State may additionally require renderings at no additional cost. The preliminary design shall include an updated cost estimate organized by trade categories, allowances, contingencies, Contractor's fee, and all other items that will comprise the Contract Sum. The Contractor shall identify all employees, consultants, subcontractors, and suppliers who will contribute to the Work. The Contractor shall in addition provide an updated design, construction, and commissioning schedule that identifies the Contractor's proposed dates of Substantial Completion, Final Completion, and Contract Completion. The Contractor shall revise the documents until accepted and approved by the State.

4.5.5 Contract Amendment Upon the State's approval of the preliminary design, the Project Manager will amend the contract sum (maximum limiting amount) and contract term to reflect the final contract sum and schedule.

4.5.6 Construction Design Phase The next phase of design, Construction Document Phase, shall not begin until the State approves the preliminary design and supporting documents and issues written notice for the Contractor to proceed. The Construction Documents shall establish and detail all aspects of the Work to be performed, including levels of performance and quality. The Construction Documents will not deviate from the approved preliminary design unless agreed

upon by the State. The failure of the State discover any deviations shall not relieve the Contractor of the obligation to design the Work in accordance with the approved preliminary design. The Contractor shall submit the Construction Documents to the State for approval, and the Contractor shall revise the Construction Documents until approved by the State.

4.6 INTIATION OF CONSTRUCTION

4.6.1 Construction shall not commence until the State approves the Construction Documents and issues written notice for the Contractor to proceed. All permits must be approved before construction can proceed.

4.6.2 The Contractor shall perform no portion of the Work at any time without Construction Documents or, where required, approved Shop Drawings, Substitutions, Product Data or Samples for such portion of the Work.

4.7 LABOR AND MATERIALS

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.7.2 The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work anyunfit person or anyone not skilled to perform the tasks assigned.

4.8 WARRANTY AND CERTIFICATIONS

4.8.1 Contractor guarantees to repair, replace, re-execute or otherwise correct any defect in workmanship, materials, or the like that fails to conform with the requirements of this Contract or that appears during the progress of the Work or within one year of Substantial Completion or final acceptance of the State, whichever dates later.

4.8.2 The Contractor warrants to the State that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If requested by the State, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2 of these General Conditions.

4.8.3 As required, the Contractor shall furnish certifications from its Design Professionals that, to the best of their knowledge, information and belief, the documents or services certified (a) are consistent with the Contract Documents and (b) comply with applicable statutes, ordinances, codes, or other regulations.

4.9 TAXES

The State is exempt from all sales and federal excise taxes. Contractors will be responsible for the payment of any sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

4.10 PERMITS, FEES AND NOTICES

4.10.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits, licenses, inspections, and certifications required by the Vermont Division of Fire Safety, subject to fee waivers the State is entitled to.

4.10.2 The Contractor shall be responsible for the cost of all environmental testing, geotechnical testing such as but not limited to borings, pits, percolation tests, bearing tests, and seismic evaluation. The Contractor shall also be responsible for the cost of structural, mechanical, chemical and other laboratory tests, inspections, and reports required by law or this Contract, including the cost of approvals/permits, subject to fee waivers the State is entitled to.

4.10.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.10.4 It is the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the Design Professional(s) and Project Manager and any necessary changes shall be accomplished by appropriate modification.

4.10.5 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, the Contractor shall assume full responsibility thereof and shall bear all costs attributable thereto, and for bringing Work into full compliance.

4.11 ALLOWANCES

4.11.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as dictated by the process contained in the Contract Documents.

4.11.2 Unless otherwise provided in the Contract Documents:

(a) These allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes subject to Paragraph 4.9.

(b) The Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance.

(c) Whenever the actual cost is more than or less than the allowance, the Contract Sum

shall be adjusted accordingly by Change Order. The Change Order shall list separately adjustments to the allowance and changes in the Contract Sum due to handling costs on site, labor, installation costs, overhead, profit and other expenses.

4.12 DOCUMENTS AND SAMPLES AT THE SITE

4.12.1 The Contractor shall maintain at the site for the State one record copy of all Drawings, Specifications, Addenda, Change Orders and other modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the State for monthly review prior to approval of Contractor's monthly application for payment. Prior to substantial completion of the Work, the Contractor shall ensure that one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples are delivered to the State.

4.12.2 The Contractor shall require its consultants and subcontractors to review and update the site set of Drawings, Specifications, Addenda, Change Orders, and other modifications each month before submitting their own requests for payment.

4.13 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.13.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.13.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.13.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.13.4 The Contractor shall create and update a schedule of submittals for all shop drawings, product data, and samples. This schedule shall be tied to or be part of the overall project schedule described in Paragraph 4.3.

4.13.5 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the State or any separate Contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.13.6 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that the Contractor has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.13.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.3.3 of these General Conditions unless the Contractor has specifically informed the State in writing of such deviation at the time of submission and the State has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Project Manager's approval thereof.

4.13.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by a Design Professional on previous submittals.

4.13.9 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the associated Design Professional and the Project Manager. All such portions of the Work shall be in accordance with approved submittals.

4.14 USE OF AND ACCESS TO SITE

4.14.1 The Contractor shall confine operations at the site to areas permitted by law, including areas designated for operations or prohibited from operations by any applicable permit and or regulation, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.14.2 Employees of the State, its separate contractors, and its consultants shall at all times have access to the site, subject to safety precautions established by the Contractor.

4.15 CUTTING AND PATCHING OF WORK

4.15.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.15.2 The Contractor shall not damage or endanger any portion of the Work or the work of the State or any separate Contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the State or any separate Contractor except with the written consent of the State and of such separate Contractor. The Contractor shall not unreasonably withhold from the State or any separate Contractor its consent to cutting or otherwise altering the Work.

4.16 HAZARDOUS MATERIALS

4.16.1 The Contractor is responsible for compliance with any requirements for hazardous materials on the jobsite, whether they are discovered, brought on site for storage or use, or being removed. The Contractor shall indemnify the State for any cost the State incurs to remediate substances negligently handled.

4.16.2 If the Contractor encounters an unforeseen hazardous material that could result in injury or death to persons, the Contractor shall, upon recognizing the condition, immediately stop Work

in the affected area and report the condition to the Project Manager in writing. Upon receiving notice the Project Manager shall issue a Construction Change Directive (CCD) according to Subparagraph 12.1.8. Work may resume in the affected area shall resume upon written agreement of the State and the Contractor.

4.17 CLEANING UP

4.17.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by the Contractor's operations. At the completion of the Work the Contractor shall remove all waste materials and rubbish from and about the Project as well as all tools, construction equipment, machinery and surplus materials. The Contractor shall leave the premises in a clean and satisfactory condition.

4.17.2 If the Contractor fails to clean up at the completion of the Work, the State may do so as provided in Paragraphs 14.5 and 14.6 and the cost thereof shall be charged to the Contractor.

4.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the State harmless from loss on account thereof, except that the State shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent or any other right or interest held by a third party. The Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the State.

4.19 INDEMNIFICATION

The Contractor hereby agrees and consents to indemnify and hold harmless the State under the terms and conditions specified in "Attachment C".

ARTICLE 5: COMMISSIONING SERVICES

5.1 DEFINITIONS

5.1.1 The scope of commissioning services shall be detailed in Attachment A of the CONTRACT FORM FOR DESIGN-BUILD SERVICES.

5.1.2 The Contractor shall designate and retain a Commissioning Coordinator who creates the commissioning plan; coordinates inspections and observations of all parties (State, Design Professionals, and jurisdictional authorities); maintains logs, checklists, reports, and certifications; coordinates Warranty Phase tasks; and assists the Contractor with the production the O&M manual.

5.1.3 The State may, at its discretion, retain an independent Commissioning Agent. The Commissioning Coordinator will coordinate all commissioning activities with this Agent when one is retained.

5.2 RESPONSIBILITIES

5.2.1 A draft of the O&M manual for the project must be submitted by the Contractor to the State prior to Substantial Completion.

5.2.2 All commissioning and Warranty Phase tasks must be completed and approved by the State before the Project Manager will approve a Certificate for Payment for Contract Completion to close out the contract.

6 ARTICLE 6: SUBCONTRACTORS

6.1 DEFINITIONS

6.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work for this Project. The term Subcontractor means a Subcontractor or its authorized representative. The term Subcontractor does not include any separate Contractor or its Subcontractors.

6.1.2 A Sub-Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work. The term Sub-Subcontractor means a Sub-Subcontractor or an authorized representative thereof.

6.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

Unless other procedures are specified or required by the Contract Documents or the Bidding Documents, then the following provisions are applicable:

6.2.1 The Parties agree that it is in the best interest of both the Contractor and the State to determine and select subcontractors as soon as possible after the Contractor has been awarded the Project. Therefore the Contractor agrees to furnish to the State in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work within ten (10) working days of award of the Project to the Contractor. The State will reply within ten (10) working days to the Contractor in writing stating whether or not the State, after due investigation, has reasonable objection to any such proposed person or entity.

6.2.2 The Contractor shall not contract with any such proposed person or entity to whom the State has made reasonable objection under the provisions of Subparagraph 6.2.1 of these General Conditions. The Contractor shall not be required to contract with anyone to whom it has a reasonable objection.

6.2.3 If the State has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the State has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an

appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Subparagraph 6.2.1 of these General Conditions.

6.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the State makes a reasonable objection to such substitution.

6.3 SUBCONTRACTUAL RELATIONS

By written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the State. Said agreement shall preserve and protect the rights of the State under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the State. The Contractor shall require each Subcontractor to enter into similar agreements with its Sub-Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 6.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to its Sub-Subcontractors.

7 ARTICLE 7: WORK BY STATE OR SEPARATE CONTRACTORS

7.1 STATE'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

7.1.1 The State reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the State, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

7.1.2 When separate Contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate State Contractor Agreement.

7.1.3 The State will provide for the coordination of the work of its own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

7.2 MUTUAL RESPONSIBILITY

7.2.1 The Contractor shall afford the State and separate Contractors reasonable opportunity

for the delivery and storage of their materials and equipment and the execution of their work, and the Contractor shall connect and coordinate its work with the work of the State and separate Contractors as required by the Contract Documents.

7.2.2 If any part of the Contractor's Work depends upon the work of the State or any separate Contractor for proper execution or results, the Contractor shall, prior to proceeding with that portion of the Work, report in a timely way to the Project Manager any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the State's or separate Contractors work as fit and proper to receive the Contractor's Work, except as to defects which may subsequently become apparent in such work by others.

7.2.3 Any costs caused by defective or ill-timed work shall be borne by the responsible party.

7.2.4 Should the Contractor wrongfully cause damage to the work or property of the State, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.6 of these General Conditions.

7.3 STATE'S RIGHT TO CLEAN UP

If a dispute arises between the Contractor and separate Contractors as to their responsibility for cleaning up as required by Paragraph 4.17 of these General Conditions, the State may clean up and charge the proportional cost thereof to the Contractor.

ARTICLE 8: TIME

8.1 DEFINITIONS

8.1.1 All time limits stated in the Contract Documents are material terms and time is the essence of the Contract. A failure by the Contractor to do what is required by the time specified in the Contract Documents is a breach of the contract.

8.1.2 Unless otherwise provided, the Contract's Term is the period of time between the Date of Commencement and the Date of Contract Completion, including authorized adjustments thereto.

8.1.3 The Date of Commencement is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date indicated in the CONTRACT FORM FOR DESIGN-BUILD SERVICES. In the absence of a notice to proceed and an express commencement date in the CONTRACT FORM FOR DESIGN-BUILD SERVICES, then the date of execution of the CONTRACT FORM FOR DESIGN-BUILD SERVICES shall be the commencement date.

8.1.4 Substantial completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the State can occupy or utilize the Work for its intended use.

8.1.5 The Date of Substantial Completion of the Work or designated portion thereof is the date the following tasks and deliverables are complete: (a) that work is granted a certificate of

occupancy (conditional or complete) by authorities having jurisdiction; (b) the Contractor's punch list as defined in Subparagraph 9.8.1 is submitted; (c) the Design Professional has certified that work as sufficiently complete and in accordance with the Contract Documents and that the punch list is accurate; (d) the Contractor has submitted record copies of all documents plus samples from the site in accordance with Subparagraph 4.12.1; (e) the Contractor has submitted the draft O+M Manual covering that work; (f) the Contractor has submitted its Certificate of Substantial Completion; and (g) the State has reviewed and accepted all of the above items.

8.1.6 The Date of Final Completion of the Work is the date the entire Work and the Contractor's Certificate for Payment for Final Completion is accepted by the Project Manager.

8.1.7 The Date of Contract Completion shall be established as one year from the Date of Final Completion, and it shall not occur until the Contractor's Warranty Phase tasks and deliverables are complete and submitted in accordance with Article 5 and as required elsewhere in the Contract Documents, until the Contractor's certified Certificate for Payment for Contract Completion is submitted, and until these tasks and deliverables have been approved by the Project Manager.

8.1.8 The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PERFORMANCE, DELAYS AND EXTENSIONS OF TIME

8.2.1 The Contractor shall begin the Work on the Date of Commencement and shall carry the Work forward expeditiously with adequate forces.

8.2.2 The Contractor shall not commence construction work until all insurance (other than property insurance) is effective. The Contract Time shall not be extended as a result of the Contractor's failure to obtain insurance.

8.2.3 If in the sole opinion of the State, the Contractor fails to commence work on the project or to complete the Work within agreed-upon the time limits, or to perform the Work in such a manner that it appears that the completion date can be assured, the State shall have the right to notify the Contractor and surety, if any, by Certified Mail that the terms of the Contract have been violated, and that within seven (7) days the Contract will be terminated and that the State has the right to and in fact will take over and attend to completion of the Project without prejudice to the State's remedies for any losses sustained.

8.2.4 If the Contractor is delayed at any time in the progress of the Work by any act or failure to act by the State, or by any State employee, or by any separate Contractor of the State, or by changes ordered in the Work, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the State pending alternative dispute resolution proceedings, or by any other cause which may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as agreed upon by the Contractor and Project Manager.

8.2.5 Any claim for extension of time shall be made in writing to the Project Manager not more than twenty days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of

the probable effect of such delay on the progress of the Work.

8.2.6 This Paragraph 8.2 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9: PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is the Maximum Limiting Amount stated in the CONTRACT FORM FOR DESIGN-BUILD SERVICES and, including authorized adjustments thereto, is the total amount payable by the State to the Contractor for the performance of the Work including its commissioning under the Contract Documents. No additional amount for reimbursable expenses shall be due. All reimbursable expenses incurred by the Contractor, its consultants, its employees, and its subcontractors shall be included in the Maximum Limiting Amount.

9.2 SCHEDULE OF VALUES

Prior to the commencement of construction and before the first Application for Payment, the Contractor shall submit to the Project Manager a schedule of values allocated to the various portions of the Work including commissioning, formatted and documented to substantiate its accuracy. This schedule shall be used by the Project Manager as the measure for the Contractor's Applications for Payment, and the Contractor shall update the schedule monthly.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten (10) days before the date established for the approval of each progress payment, the Contractor shall submit to the Project Manager an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the State may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made for services, materials, and equipment not only incorporated in the Work but also delivered and suitably stored at the site. If approved in advance by the State, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the State to establish the State's title to such materials or equipment or otherwise protect the State's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the State either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein

or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

In conjunction with an Application for Payment, the Contractor shall issue a Certificate for Payment containing certifications from all project Design Professionals, based on their observations at the site as provided in Subparagraph 2.3.2 of these General Conditions and the data documenting the Application for Payment, that the Work has progressed to the point indicated; that, to the best of each Design Professional's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate); and that the Contractor is entitled to payment in the amount certified.

9.5 PROGRESS PAYMENTS

9.5.1 Within ten days of receiving an Application for Payment and accompanying Certificate for Payment, the Project Manager will either approve said documents, with a copy to the Contractor, or notify the Contractor of his or her reasons for withholding approval as provided in Paragraph 9.6 of these General Conditions.

9.5.2 After the Project Manager has approved a Certificate for Payment, the State shall make payment in the manner and within the time provided in the Contract Documents.

9.5.3 The Contractor shall promptly pay each consultant and Subcontractor, upon receipt of payment from the State, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-Subcontractors in similar manner.

9.5.4 The State may, on request and at its discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Project Manager on account of Work done by such Subcontractor.

9.5.5 Contractor shall be solely responsible for all payments due any consultant or Subcontractor and shall defend, indemnify and hold harmless the State against any obligation to pay or to see to the payment of funds to any Subcontractor or consultant of the Contractor.

9.5.6 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the State, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

9.6.1 The State may withhold acceptance of a Certificate, in whole or in part, to the extent reasonably necessary to protect the State, if in the Project Manager's opinion, the Contractor is unable to make representations to the State as required in Paragraph 9.4 of these General Conditions. If the Contractor and the State cannot agree on a revised amount, the Contractor will promptly issue a Certificate for Payment for the amount that is undisputed. Any disputed amounts will be subject to the dispute resolution procedures specified in these General Conditions. The Project Manager may also decline to approve payment or, because of subsequently discovered evidence or subsequent observations, he or she may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in his or her opinion to protect the State from loss because of:

- (a) Defective Work not remedied,
- (b) Third party claims filed or reasonable evidence indicating probable filing of such claims,
- (c) Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- (e) Damage to the State or another Contractor,
- (f) Reasonable evidence that the Work will not be completed within the Contract Time, or
- (g) Persistent failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the grounds for non-payment described in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

If the State does not pay the Contractor within the time limit established in the Contract Documents any amount approved by the Project Manager or awarded by alternative dispute resolution proceedings, then the Contractor may, upon seven additional days written notice to the State, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof, is substantially complete as defined in Subparagraph 8.1.4 of these General Conditions, the Contractor shall prepare for submission to the Design Professional(s) and Project Manager a list (the "punch list") of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Contractor acknowledges that when the Design Professional(s) and Project Manager on the basis of an inspection determine that the Work or designated portion thereof is substantially complete, and the jurisdictional authority has granted a total or partial Certificate of Occupancy, the Contractor will then prepare a Certificate of Substantial Completion which includes certifications of all Design Professionals. The Certificate of Substantial Completion shall establish the Date of Substantial Completion, shall state the responsibilities of the State and the Contractor for security, maintenance, heat, utilities, damage to the Work,

and insurance, and shall fix the time, which shall not exceed thirty (30) days, within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Contractor shall submit the Certificate of Substantial Completion to the State for its written acceptance of the responsibilities assigned to the State in the Certificate. The Work shall not be considered substantially complete prior to the receipt of an approved draft O & M manual for that portion of Work as required by Subparagraph 5.2.1 as well as record copies of all documents and samples in accordance with Subparagraph 4.12.1 and as required elsewhere in the Contract Documents.

9.8.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor, approval for occupancy by the jurisdictional authority, certification by the Design Professional(s), and after the State has had a reasonable period of time to review and approve the Certificate, the State shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.8.3 The State may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by endorsement by the insurer provided property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the State and the Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of the Contractor shall not be unreasonably withheld. The process of Substantial Completion and Warranty Phase will apply to occupied portions of the Work.

9.9 FINAL COMPLETION AND PAYMENT FOR FINAL COMPLETION

9.9.1 Upon receipt of written notice from the Contractor that the Work is ready for final inspection, the Design Professional(s) will promptly make such Inspection(s) and, when the Design Professional(s) find the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professionals will certify the Contractor's Certificate for Payment for Final Completion stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said Certificate, is due and payable. The Contractor's certified Certificate for Payment of Final Completion will constitute a further representation that the Contractor has fulfilled the conditions entitling it to Payment for Final Completion as set forth in Subparagraph 9.9.3 of these General Conditions and will be provided to the Project Manager for approval and subsequent payment.

9.9.2 Neither the Payment for Final Completion nor the remaining retained percentage shall become due until the Contractor submits to the State (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the State or its property might in any way be responsible, have been paid or otherwise satisfied, (2)

consent of surety, if any, to Payment for Final Completion and (3), if required by the State, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the State. If any Subcontractor refuses to furnish a release or waiver required by the State, the Contractor may furnish a bond satisfactory to the State in an amount sufficient to discharge any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the State all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 Within ten days of receipt of an application for Payment for Final Completion with accompanying Certificate for Payment for Final Completion, plus all the requirements identified in Subparagraph 9.9.2, the Project Manager will either approve said documents, with a copy to the Contractor, or notify the Contractor of his or her reasons for withholding approval as provided in Subparagraph 9.61 of these General Conditions.

9.9.4 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, the State shall, upon application by the Contractor and after certification by the Design Professional(s) and after a reasonable time for review by the State of the application and certifications, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as required by the Contract Documents, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the State prior to certification of such payment. Such payment shall be made under the terms and conditions governing Payment for Final Completion, except that it shall not constitute a waiver of claims.

9.9.5 The acceptance of Payment for Final Completion shall constitute a waiver of all claims by the Contractor for any additional payments under the Contract.

9.10 CONTRACT CLOSE-OUT AND PAYMENT FOR CONTRACT COMPLETION

One year after Final Completion, and upon completion of all Warranty Phase tasks and deliverables, the Contractor may make its Final Application and its Final Certificate for Payment for Contract Completion which will close out this Contract. Warranty Phase tasks and deliverables are described in detail in Attachment A, but typically include (a) seasonal testing, (b) warranty work, (c) State staff training, (d) completion of the O&M Manual, (e) completion of the Commission Record, (f) complete as-built drawings and digital files, and (g) Design Professionals' completion of certifications such as LEED or Efficiency Vermont. The Contractor's Final Certificate for Payment for Contract Completion must be certified by all project Design Professionals. All work and deliverables, and the Final Application and the Final Certificate for Payment for Contract Completion, must be approved by the Project Manager before the State issues final payment to close out the contract.

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (a) all employees on the Work and all other persons who may be affected thereby;
- (b) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off-the site, under the care; custody or control of the Contractor or any of its Subcontractors or Sub-Subcontractors; and
- (c) other property at the site or adjacent thereto, including trees, shrubs; lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall: (1) exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel; and (2) give the State notice, in writing, seven (7) days in advance of the planned activity of the Contractor's intent to store and/ or use explosives or other hazardous materials or equipment on the project site.

10.2.5 When the project involves the placement or replacement of roofing systems of all types on State-owned buildings, including flat, low-pitched and steep roofs, Contractor must comply with all requirements of the latest edition of VOSHA Safety and Health Standards for Construction (29 CFR 1926) including, but not limited to, Subpart M – Fall Protection. Prior to execution of a contract by BGS, contractors engaged in placement or replacement of roofing systems of all types must submit a signed certification statement attesting to their intention to comply with VOSHA Fall Protection Regulations. Such certification shall be submitted on a State-provided form along with proof of insurance.

10.2.6 The Contractor shall promptly remedy all damage or loss (consistent with Contractor's obligations described in Attachment C) to any property referred to in Clauses 10.2.1(b) and 10.2.1(c) of these General Conditions caused in whole or in part by the Contractor, any Subcontractor, any Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1(b) and 10.2.1(c), except damage or loss

attributable to the acts or omissions of the State or anyone directly or indirectly employed by the State, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor

10.2.7 The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the State.

10.2.8 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11: INSURANCE

Insurance obligations of the parties to this agreement are fully set forth below. Attachment "C", numbered paragraph 8 has been deleted in its entirety and the following provisions are applicable:

11.1 INSURANCE – GENERAL REQUIREMENTS

Insurance obtained by the Contractor to cover the below-listed requirements shall be procured from an insurance company registered and licensed to do business in the State of Vermont. Before the Contract is executed, the Contractor shall file with the State a certificate of insurance, executed by an insurance company or its licensed agent(s), on form(s) satisfactory to the State, stating that with respect to the Contract awarded, the Contractor carries insurance in accordance with the following requirements:

- (a) *Workers' Compensation Insurance:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.
- (b) *Commercial General Liability (CGL) Insurance:* With respect to all operations performed by the Contractor and any Subcontractors, the Contractor shall carry Commercial General Liability (CGL) Insurance affording all major divisions of coverage including, but not limited to:

Independent Contractors' Protective Products and Completed Operations
Personal Injury Liability
Contractual Liability
Broad Form Property Damage
Explosion, Collapse and Underground (XCU) Coverage
Fire Legal Liability

State may require additional specific liability coverage(s) when applicable.

Limits of Coverage shall be not less than:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate Applying, In Total To This Project Only
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury and Advertising Liability
\$ 50,000 Fire Legal Liability
\$ 5,000 Medical Expense

Aggregate Limits of Insurance (Per Project) Form must be included (or as excepted in (f) below) with the Commercial General Liability Policy.

Umbrella Excess Liability Policies may be used in conjunction with primary policies to comply with any of the limit requirements specified above.

"Claims-made" coverage forms are not acceptable without the express written prior consent of the State. Each policy furnished shall contain a rider or non-cancellation clause reading in substance as follows:

“Anything herein to the contrary notwithstanding, notice of any cancellation, termination or alteration to the insurance contracts must be delivered by registered mail to the Commissioner, Department of Buildings and General Services, State of Vermont, Montpelier, Vermont, at least sixty (60) days before effective cancellation, termination or alteration date unless all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the State of Vermont.”

(c) *Professional Liability Insurance:* Before commencing work on this Agreement and throughout the term of this Agreement, all Design Professionals shall procure and maintain professional liability insurance for all professional services performed under this Agreement, with minimum coverage as required by the Agency of Administration but not less than \$1,000,000 per claim and \$2,000,000 policy aggregate.

(d) *Automobile Liability Insurance:* Contractor shall carry Automobile Liability Insurance covering all motor vehicles, including owned, hired, borrowed and non-owned vehicles, used in connection with the project. Limits of Coverage shall be not less than:

\$1,000,000 Combined Single Limit

(e) Contractor shall require each Subcontractor, if any, to maintain the same Workers'

Compensation, Commercial General Liability, and Automobile Liability coverage as specified in paragraphs (a), (b), and (d) above.

- (f) *Scope of Insurance & Special Hazards:* The insurance required under subparagraphs (b), (c), and (d) above shall provide protection for the State, Contractor and the Subcontractors, if any, against damage claims which may arise from work being performed. Special hazards may be encountered by the Contractor or by any person directly or indirectly employed by the Contractor or a Subcontractor, and additional coverage may be required if conditions warrant.
- (g) If Contractor is unable to provide Aggregate Limits of Insurance (Per Project) as required in (b) above, Contractor shall purchase an Owner's Protective Liability Insurance Policy in the name of the State of Vermont to cover all exposures, including bodily injury and death, arising out of and in the course of this Contract. Limits of liability shall be the same as those required of the Contractor under paragraph (b) above.
- (h) *Additional Insured:* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- (i) *Notice of Cancellation or Change:* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State of Vermont, Office of Purchasing & Contracting.

11.2 INSURANCE REQUIREMENTS FOR BUILDER'S RISK INSURANCE

11.2.1 Builder's Risk for New Construction Projects: Contractor shall secure and maintain Builder's Risk insurance for this project if it involves new construction. The following provisions apply:

- (a) Contractor shall purchase and maintain Builder's Risk Insurance. The Contractor shall name the Contractor and the State of Vermont as their interest may occur. Other parties shall be insured as the State may reasonably require.
- (b) Contractor shall secure and maintain insurance on portions of the work stored off-site, on site and in transit. Boiler & Machinery Insurance may be used in conjunction with this coverage if it is required to meet the testing requirement.
- (c) Any deductible applicable to loss covered by insurance provided hereunder shall be borne by the Contractor.

11.2.2 Builder's Risk for Construction/Renovation Projects: At the sole discretion of the State, Contractor may also be required to obtain and maintain Builder's Risk insurance on

construction/renovation projects.

If the project is for the construction/renovation of an existing structure, and the State has determined that Contractor will not be obligated to obtain and maintain Builder's Risk insurance, then the following provisions apply:

- (a) The State will maintain property insurance upon the construction site and will not require Contractor to purchase and maintain Builder's Risk Insurance upon the entire work at the site.
- (b) The decision of the State to waive the requirement that the Contractor maintain builder's risk coverage does not waive Contractor's liability for damage to the State's real and personal property. Contractor's liability for loss to the State's real and personal property will be limited to the first \$100,000 of each and every property loss at the work site provided such loss is covered under the State's property insurance coverage. If the Contractor elects to meet this obligation by purchase of commercial insurance, this insurance shall name the Contractor and the State of Vermont as Named Insureds and shall include the interests of the Contractor and Subcontractors. Other parties shall be insured as the State may reasonably require.
- (c) Contractor shall secure and maintain insurance on portions of the work stored off-site, on site and in transit. Boiler & Machinery Insurance may be used in conjunction with this coverage if it is required to meet the testing requirement. The cost of any deductible applicable to loss covered by insurance provided hereunder shall be borne by the Contractor.
- (d) Except as provided for in 11.2.2 (a)-(c) above the State and Contractor waive all rights against each other and the Subcontractor, Sub-subcontractors, agents and employees of the other.

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

11.4 Contractor shall comply with the regulations and requirements of any insurance company which issues a policy on any part of the work or site.

11.5 The State shall have power to adjust and settle any loss with the insurers.

ARTICLE 12: CHANGES IN THE WORK

12.1 DEFINITIONS

12.1.1 Change Order: A Change Order is a written order to the Contractor signed by the State and the Contractor issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, and/or the Contract Term. The Contract Sum and the Contract Term may be changed only by Change Order. A Change Order signed by the Contractor indicates its agreement therewith, including the adjustment in the Contract Sum and/or the Contract Term.

12.1.2 Proposed Change Order (PCO): A PCO is a written request submitted to the Contractor by either the Contractor or the State requesting a change to the Contract Sum and/or the Contract

Term. The State will prescribe a PCO form for use by the Contractor. The Contractor shall submit all PCO's on the prescribed form.

12.1.3 Construction Change Directive (CCD): A CCD is a written document prepared by the State directing the Contractor to make changes in the Work where the State and the Contractor have not yet reached an agreement on proposed changes in the Contract Sum and/or Contract Term. A CCD becomes part of a PCO. The State will prescribe a CCD form for use by the Project Manager. All CCD's must be submitted on the prescribed form.

12.1.4 The State, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Term being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.5 Payment for changes in the Work will only be made after a Change Order is signed by the Contractor and the State, and after the Change Order is executed by the State.

12.1.6 The general process by which changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions is as follows:

- (a) If the Proposed Change Order (PCO) originates from the Contractor, the Contractor signs and submits the PCO to the State on the prescribed form.
- (b) If the PCO originates from the State, the Project Manager submits the PCO to the Contractor for its review and signature, then presents the PCO to the State for approval.
- (c) The PCO is signed by the Project Manager.
- (d) Every thirty (30) days, Contractor shall consolidate all current PCO's that have been signed by the Project Manager into one (1) Change Order.
- (e) The Change Order is then submitted to the Project Manager who then processes the Change Order.

12.1.7 The cost or credit to the State resulting from a change in the Work shall be determined in one or more of the following ways:

- (a) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) by unit prices stated in the Contract Documents or subsequently agreed upon;
- (c) by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (d) by the method provided in Subparagraph 12.1.8.

12.1.8 If none of the methods set forth in Clauses 12.1.7 (a)–(c) is agreed upon, or cannot be agreed upon at the time due to the nature of the change, emergent conditions, or lack of required information, the Contractor, provided it receives a Construction Change Directive (CCD) signed by the State, shall promptly proceed with the Work involved. The cost of such Work shall then be recommended by the Contractor on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under

Clauses 12.1.7 (c) and 12.1.7 (d) above, the Contractor shall keep and present, in such form as the Project Manager may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Proposed Change Order (PCO). Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, cost of delivery; cost of labor, including social security, medicare, and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the State, payments on account shall be made on the Contractor's Certificate for Payment. The amount of credit to be allowed by the Contractor to the State for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Project Manager. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for Overhead and Profit shall be figured on the basis of the net increase, if any, with respect to that change. It is the Project Manager's responsibility to ensure that all CCD's are converted and incorporated into a PCO within thirty (30) days of completion of the changes to the work that are the subject of the CCD.

12.1.9 Reimbursable expenses, such as consultant hourly rates, transportation costs, lodging, printing, reproductions, and postage, shall be established at the time of bidding and recorded in Attachment B, or they shall be reimbursed at the discretion of the State. All unit rates must be fully burdened; no multipliers shall be added.

12.1.10 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the State or the Contractor, the applicable unit prices shall be equitably adjusted.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty days after the first observance of the conditions.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, the Contractor shall give the State written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3 of these General Conditions. No such claim shall be valid unless so made. If the State and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined pursuant to the dispute resolution provisions in these General Conditions. Any change in the Contract Sum

resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any order by the State to stop the Work pursuant to Paragraph 14.5 of these General Conditions where the Contractor was not at fault, or (2) failure of payment by the State pursuant to Paragraph 9.7 of these General Conditions, the Contractor shall make such claim as provided in Subparagraph 12.3.1 of this agreement.

12.3.3 The State will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the State and Contractor within ten (10) days unless the Contractor or the State objects to the change in writing.

ARTICLE 13: UNCOVERING AND CORRECTING OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the State or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the State, be uncovered for the Project Manager's or Clerk's observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the State has not specifically requested to observe prior to being covered, the State may request to see such Work and it shall be uncovered by the Contractor. If such Work is found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the State. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the State or a separate contractor as provided in Article 7 of these General Conditions, in which event the State shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work which the State has found to be defective or which fails to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the State's additional services made necessary thereby.

The State, upon a finding of defect or failure to conform, shall immediately notify the Contractor, in writing, of the defect. The Contractor shall begin correcting the defective or non-conforming Work within ten (10) days unless the State agrees to a Change Order which reflects the reduction in Contract Sum due to the value of diminishment of the defective or nonconforming Work.

13.2.2 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the State of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable

special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the State to do so unless the State has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The State shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Paragraphs 4.8 and 13.2 of these General Conditions, unless removal is waived by the State.

13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Paragraphs 4.8 and 13.2, the State may correct it in accordance with Paragraph 14.6 of these General Conditions.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time, the State may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the State may upon ten (10) additional days written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, and the State's additional services and expenses made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the State.

13.2.6 The Contractor shall bear the cost of making good all work of the State or separate Contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.8 of these General Conditions. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

The State may accept defective or nonconforming Work pursuant to Subparagraph 13.2.1 of this agreement. If the State elects to accept the defective or nonconforming Work, a Change Order will be issued to reflect a reduction in the Contract Sum. The Design Professional will recommend to the State the value of diminishment of the defective or nonconforming Work, however the State reserves the right to obtain a third party estimate of the value of the diminishment. If the State and Contractor cannot agree, then the issue will be resolved pursuant

to the dispute resolution provisions of these General Conditions. Such adjustment shall be effected whether or not Payment for Final Completion has been made.

ARTICLE 14: TERMINATION AND SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

If the Work is stopped for a period of thirty days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the Work should be stopped for a period of thirty (30) days by the Contractor because the State has not made payment thereon as provided in Paragraph 9.7, then the Contractor may, upon seven (7) additional days written notice to the State, terminate the Contract and recover from the State payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE STATE FOR CAUSE

14.2.1 If the Contractor is adjudged bankrupt, or if the Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a provision of the Contract Documents, then the State, after determining that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven (7) days written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the State may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

14.2.2 If the costs of finishing the Work, including compensation for State's additional services and expenses made necessary thereby, exceed the unpaid balance of the Contract Sum, the Contractor or Contractor's Surety shall pay the difference to the State. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the State's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. The Contractor's obligation to pay all costs of finishing the Work shall survive the termination of the Contract.

14.3 TERMINATION BY STATE FOR CONVENIENCE

14.3.1 The State may, at any time, terminate this agreement for the State's convenience and without cause.

14.3.2 Upon receipt of written notice from the State of such termination for the State's convenience, the Contractor shall:

- (a) cease operations as directed by the State in the notice;
- (b) take actions necessary, or that the State may direct, for the protection and preservation of the Work; and
- (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter no further subcontracts and purchase orders.

14.3.3 In case of such termination for the State's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

14.4 SUSPENSION BY STATE FOR CONVEIENICE

14.4.1 The State may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the State may determine.

14.4.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.4.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- (a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- (b) that an equitable adjustment is made or denied under another provision of this Contract.

14.5 STATE'S RIGHT TO STOP THE WORK

If the Contractor fails to correct defective Work as required by Paragraph 13.2 or fails to carry out the Work in accordance with the Contract Documents, the State, by a written order signed personally or by an agent specifically so empowered by the State in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the State to stop the Work shall not give rise to any duty on the part of the State to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 7.1.3.

14.6 STATE'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the State to commence and continue correction of such default or neglect with diligence and promptness, the State may, after seven (7) days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the State's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover the amounts paid

by the State to make good such deficiencies, then the Contractor shall pay the difference to the State.

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 GOVERNING LAW

The Contract shall be governed by the laws of the State of Vermont.

15.2 SUCCESSORS AND ASSIGNS

The State and the Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to itself hereunder, without the previous written consent of the State.

15.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

15.4 CLAIMS FOR DAMAGES

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

15.5 BOND REQUIREMENTS

The Contractor hereby agrees to comply with the State's bonding requirements as incorporated into the Contract Documents.

15.6 RIGHTS AND REMEDIES

15.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

15.6.2 No action or failure to act by the State or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be

specifically agreed in writing.

15.7 TESTS

15.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Project Manager timely notice of its readiness so the Project Manager, or his or her designated representative may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.

15.7.2 Contractor acknowledges and agrees that if a Design Principal or the State determines that any Work requires special inspection, testing, or approval which Subparagraph 15.7.1 does not include, the State will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 15.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof; otherwise the State shall bear such costs, and an appropriate Change Order shall be issued.

15.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by the Contractor to the Project Manager.

15.7.4 If a Design Professional is to observe inspections, tests or approvals required by the Contract Documents, the Contractor shall ensure the Design Professional is present for the inspections, tests, or approvals.

15.8 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at a rate of twelve percent (12 %) per annum. A payment is NOT due and payable unless and until the State has received an invoice filled out correctly and completely with required supporting documentation, including the Project Manager's approval.

15.9 DISPUTE RESOLUTION PROCESS

Any claim, dispute or other matter in question shall be subject to the following dispute resolution process: Contractor may seek review by the Commissioner of Buildings and General Services. Contractor must seek review by the Commissioner within ten (10) days of identification, in writing, of the disputed issue between the Project Manager and the Contractor otherwise the recommendation shall be deemed accepted by the Contractor. Failing resolution by the Commissioner, the Contractor then may request that the parties submit to non-binding mediation with a mutually agreed upon mediator under the most current Construction Industry Mediation Rules of the American Arbitration Association. The cost of non-binding mediation shall be borne equally by both parties unless both parties agree to a different arrangement for payment prior to the mediation.

Agency of Natural Resources, Essex Field Offices, DEC / ACT 250 Heat Pump Installation

01000 SCOPE OF WORK

Construction shall be in accordance with this Scope of Work and in accordance with the work, the plans, and specifications. The following represents a summary description of the Project.

The Contractor will be responsible for the complete scope and all required sub-contractors. The project will be turnkey.

Design and Install a multi-head heat pump system for the proposed building located at 111 West Street, Essex Junction VT 05452. The size of the new equipment will be based on energy efficiency measures that will be implemented in a future energy conservation (envelope upgrade) project. Energy efficiency measures to be accomplished during that future project will achieve an R-50 value in the attic space, R-25 in the atrium and R-21 in the foundation walls and basement.

Sizing of the cooling equipment shall be the responsibility of the contractor. All equipment shall be sized based on the cooling load. The existing heating system will remain in place.

The intent is to have the equipment in place and ready to be started prior to the cooling season (2018). The building has an existing ventilation system that will remain. No ventilation will be included in the scope of this work. No work associated with the exiting building heat will be included in this scope.

The bidder shall provide a break out price for the original building as specified under sections 2.2.2 – 2.2.4, a break out price for the new wing as specified under section 2.2.5 and a total price to complete the entire project.

There are no blueprints of the building. A mandatory project showing for prospective bidders is required.

Current Building Features:

- Built in 1920 with a new addition added in 1985.
- 4,363 square feet of finished floor area
- Current blower door number...4,030 CFM50 (0.80 CFM50/shell sq. ft.)
- Original section flat attic 1" rock wool and 4" loose cellulose, attic plane is not air sealed, rated R-value R-16, effective R-11
- New wing attic flats 1" poly-isocyanurate foam and 8" fiberglass batts, attic plane is not air sealed, rated R-value R-25, effective R-19
- Shed addition flat attic, 11" fiberglass batts, attic plane is not air sealed, rated R-value R-33, effective R-19
- Exterior walls original and shed addition 3.5" cellulose, rated R-value R-11, effective R-8
- Exterior walls in new wing, 1" poly-isocyanurate foam and 5.5" fiberglass, rated R-value R-24, effective R-20

DESCRIPTION OF WORK:

1. General

- 1.1.** All sections of contract specifications and drawings are interconnected and binding.
- 1.2.** Examine drawings and all other sections of the specifications for requirements therein affecting the work to be performed.
- 1.3.** As used herein, the word “provide” shall mean “furnish, rig, install, and warrant”.
- 1.4.** Where the term Contractor is used it is meant to identify the Company with whom the State of Vermont has a contract agreement for this project.
- 1.5.** In all instances where an item is referred to in the singular number in the specifications or drawings, it shall be understood that the references shall apply to as many, same or similar items as are necessary to complete the work.

2. Detailed Scope of Work:

2.1. Contractor shall:

- 2.1.1.** Coordinate and Schedule the Work between the Owner, Occupants, Contractors and Subcontractors.
- 2.1.2.** Process and submit shop drawings for all work being conducted.
- 2.1.3.** Responsible for daily clean up as work progresses.
- 2.1.4.** Responsible for the conduct of all contract personnel.
- 2.1.5.** Submitting all paperwork as it relates to any security clearance required by the Agency of Natural Resources.
- 2.1.6.** Conducting weekly meetings with the designated State of Vermont representative to insure work progresses smoothly- start to finish.

2.2. Installation:

- 2.2.1.** Fujitsu Halcyon Multi-room mini-split equipment or similar shall be used for base bid. All zones shall be provided with a programmable T-stat capable of a manual override. (DDC not required)
- 2.2.2.** The second floor of the original building shall be provided with (3) indoor units, and a single outdoor unit. The office on the south exposure shall have (1) indoor wall mount unit with independent zone control. The central office area shall have (2) indoor wall mounted units. A single thermostat located on an internal partition will be acceptable.
- 2.2.3.** The first floor of the original building and the shed addition shall be provided with (5) indoor units and a single outdoor unit. The conference room in the shed addition shall have (1) wall, or ceiling mounted indoor unit with independent zone control. The office located in the shed addition shall have (1) wall mounted indoor unit with independent zone control. The main lobby shall have (1) wall mounted indoor unit with independent zone control. The two offices on the west exposure shall each be provided with a wall mounted indoor and individual zone control.
- 2.2.4.** (Using a dedicated outdoor unit for the 2 zones in the shed addition would be accepted as an alternate)

2.2.5. The new wing shall be provided with (10) indoor wall mounted units and (2) outdoor units. The double office on the west exposure shall have (2) wall mounted indoor units. A single t-stat located on an interior partition will be acceptable. The corner office shall have (1) wall mounted indoor unit with independent zone control. The open area along the north exposure shall have a minimum of 1 wall mounted indoor unit with independent zone control. Each of the 6 offices on the east exposure shall be provided with a wall mounted indoor unit and independent zone control.

END OF SECTION 01000

01001 BASIC REQUIREMENTS

A. GENERAL

1. All Sections of Contract, Specifications and Drawings are interconnected and binding.
2. Examine Drawings and all other Sections of the Specifications for requirements therein affecting the work to be performed.
3. As used herein, the word "provide" shall mean "furnish, rig, install and warrant".
4. Where the term Contractor is used it is meant to identify the Company with whom the State of Vermont has a contract agreement for this project.
5. In all instances where an item is referred to in the singular number in these Specifications or on the Drawings, it shall be understood that the references shall apply to as many same or similar such items as are necessary to complete the work.

B. SCOPE

1. See Section 01000 Scope of Work

C. CODES, STANDARDS AND AUTHORITIES

1. Perform all work in strict accordance with all rules, regulations, standards, codes, ordinances or laws of local, State and Federal governments or other authorities having lawful jurisdiction and be responsible for compliance therewith. Such authorities include, but are not limited to, the following:
2. Local and State building, plumbing, mechanical, electrical, fire and health department codes.
 - A. National Fire Protection Association (NFPA).
 - B. National Board of Fire Underwriters (NBFU).
 - C. Occupational Safety and Health Act (OSHA).
 - D. International Building and Mechanical Codes
 - E. National Electric Code
3. All material and equipment shall be ASME, ANSI, or Underwriter's Laboratory (UL), listed as applicable for the service for which it is being used.

D. GUARANTEE WARRANTY

1. Guarantee shall apply only to the new equipment, systems, and associated work performed.
2. Guarantee in writing all work for a period of one year from the date of beneficial use to the Owner. Should any defects in materials, equipment, workmanship or installation develop within this period, promptly make all necessary repairs and replacements to the satisfaction of the Engineer and at no cost to the Owner. Said written guarantee shall further stipulate that any damage caused in making such necessary repairs and replacements shall be remedied and corrected.
3. At the end of the guarantee period transfer to the Owner all individual equipment and material guarantees which are still in force.

4. Warranties

- A. With respect to all warranties, express or implied, from the prime Contractor, subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
 - a.) Obtain all warranties that would be given in normal commercial practice;
 - i.) Require all warranties to be executed, in writing for the benefit of the State and;
 - ii.) Enforce all warranties for the benefit of the State.

E. CONTRACT DOCUMENTS AND SITE CONDITIONS.

1. Work to be performed is described and specified herein and or on referenced Drawings.
2. The Drawings and specifications are diagrammatic and indicate the general arrangement of work included in the Contract. It is not intended to specify or to show every component. However, it is the intent of these Specifications and Drawings that all required components and materials whether or not indicated or specified, shall be provided in such a manner as to make the entire project fully complete and operational in all respects.
3. COMPLETE SYSTEMS: Provide all labor, materials, equipment and perform all work necessary for the complete and proper replacement of fixtures as shown on the plans and required by the specifications and other minor work not specifically shown or specified, yet required to ensure properly operating and complete systems.
4. Any questions regarding these Drawings or Specifications shall be addressed to the Owner in writing prior to the awarding of the Contract. Otherwise, the Owner's interpretation of the meaning and intent of the Drawings and Specifications shall be final.
5. Discrepancies in Document
 - A. Where there are conflicts or contradictions within or between any of the contract documents, discovered prior to Bid, Owners notify the Project Manager five business days, minimum prior to Bid opening. Otherwise, the Owner's interpretation of the documents shall be final, and no additional compensation shall be permitted due to discrepancies or un-clarities thus resolved. Where there is a value or cost difference, the contractor is obligated to provide the more extensive or valuable alternative.
 - B. Where Drawings or Specifications do not coincide with the written recommendations of the manufacturer of a material or piece of equipment, this shall be brought to the attention of the Engineer in writing, before installation of the item in question. Otherwise, make such changes in the installation as the Owner may require without additional cost to the Owner.

6. Examination of existing Site, Building, and Contract Documents

- A. Before submitting bid prices, thoroughly examine the Site, existing building, and the Contract Documents with special emphasis on all the adjoining work upon which this work depends. Report in writing to the Owner any conditions, which might adversely affect the work not otherwise identified on the drawings or specified herein.
- B. Visually Accessible Building or Site conditions are considered an integral part of contract documents.
- C. Existing visually accessible conditions are to be considered as part of the Bid Documents. During bidding process visit and examine site as often as necessary. Arrange visits with Owner.
- D. No claim for extra compensation will be recognized for difficulties encountered which, in the opinion of the State of Vermont, would have been revealed by the proper examination of the site.

F. WORKMANSHIP

- 1. All workmanship, materials installation of this section shall be done in a First Class and neat manner. All work shall be rugged and secure. Any work judged unacceptable to the State of Vermont by such comparison shall be replaced or re-installed by this contractor without extra charge. All Systems shall be straight level, plumb and/or parallel to building walls, floors or ceilings. Conduit shall not be crooked or forcibly bent.
- 2. Work shall be executed by skilled craft persons and shall be first class and in conformance with the best practices of each trade involved. Work shall present a neat and first class appearance when completed. Material and equipment shall be installed according to manufacturer's recommended best practice
- 3. Install products in accordance with manufacturer's instructions and per the plans and specifications. Notify Owner if Documents conflict with manufacturer's instructions or Code.
- 4. Regarding Installation of equipment where conflicts occur that will prevent service or maintenance: Stop work before proceeding and notify the State of Vermont representative. Otherwise do not install any equipment where service will be hindered by adjacent sprinkler, conduits, ducts, pipes etc.

G. SUBMITTALS AND SHOP DRAWINGS REFER TO 01300

H. SCHEDULING OF WORK

- 1. Complete work before June 15, 2018.
- 2. Duration of Project construction from on-site startup through completion shall be a maximum of 6 weeks.
- 3. Schedule work with Owner.
- 4. Submit a proposed schedule indicating areas of work with start and finish dates.

I. GENERAL AND MISCELLANEOUS

1. Applications for Payment

- A. At the conclusion of construction provide two invoices; one for the contract amount minus 10% retainage, and one for the retainage.

2. Access to Site and Parking

- A. Parking: Arrange with Owner for temporary parking areas to accommodate construction personnel.
- B. Access to and egress from site for contractor's employees, trucks, construction machinery, and material deliveries shall be in accordance with prevailing local or other ordinances shall be as approved by the Owner.
- C. Direct access on the site shall be along existing drives and roads.
- D. Park vehicles in designated parking areas. Do not park on grass or areas intended to be grass

3. Utilities Provided by Owner

- A. Electrical Service For Construction Purposes
- B. Electric energy is available at no cost to the Contractor.
- C. The Contractor shall furnish all temporary wiring, equipment, and extensions from the Owner's source of power that are necessary for the completion of the Work.
- D. No circuit shall become overloaded due to temporary loads.
- E. All temporary wiring, equipment, and extensions shall be installed in conformity with NEC.
- F. Sanitary Facilities: The Contractor will be permitted to use existing public toilet facilities and janitor closet facilities in the building.

4. Construction/Field Meetings

- A. Preconstruction Meeting: Contractor shall schedule a preconstruction meeting before starting construction. Review responsibilities and personnel assignments.
 - a.) Attendees: State's Project Manager, the Contractor and its foreman; and other concerned parties shall attend.
 - b.) Participants shall be familiar with the Project and be authorized to conclude matters relating to the Work.
 - c.) Agenda: Discuss:
 - i.) Work or items that could adversely affect progress:
 - ii.) Tentative construction schedule.
 - iii.) Material storage
 - iv.) Critical work sequencing.
 - v.) Submittal of Shop Drawings and Product Data.
 - vi.) Use of Premises.
 - vii.) Coordination with, and working around tenant staff.

5. Coordination

- A. Coordinate scheduling, submittals, and Work of the various sections of specifications to ensure efficient and orderly sequence of installation.
- B. Verify utility requirement characteristics of operating fixtures are compatible with building utilities.

J. CLEANING

- A. Work and storage areas shall be maintained and swept clean on a daily basis.
- B. Provide on-site containers for collection of waste materials, debris and rubbish.
- C. Materials removed and not reused and debris resulting from the Contractors work shall become the property of the Contractor and shall be removed from the site and legally disposed of.
- D. In preparation of final inspection or substantial completion:
 - A. Remove grease, mastic adhesives, dust, dirt, stains, fingerprints, labels and other foreign materials from exposed equipment surfaces.
 - B. Unless otherwise specified all surfaces under work areas shall be swept or vacuumed daily

K. SECURITY

- 1. Abide by owners requests regarding security issues.
- 2. Contractor shall be responsible for their own security in reference to the work completed, materials and equipment stored on the site, and shall comply with the Owner's security requirements.

L. SUPERVISION

- 1. The Contractor's Foreman shall be in attendance at the site during the progress of the work. The Foreman shall represent the Contractor and all communications given to them shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.
- 2. All electrical work shall be performed by a licensed Electrician
- 3. Fully insure workmen and work as required.

M. MATERIALS AND EQUIPMENT

- 1. Except as otherwise noted, material or equipment mentioned in Specifications or on Drawings shall be furnished new and supplies, necessary for complete and operational installation, shall be provided
- 2. Finish of materials, components, and equipment shall be new and unscratched.
- 3. Owner shall not be responsible for material and equipment prior to testing and acceptance
- 4. Transportation and Handling:
 - A. Contractor shall be responsible for the transportation and handling of all materials to, from, and at the project site. All damages thereto shall be replaced by the responsible party at no additional cost to the Owner.
 - B. Properly identify all materials shipped to the Contractor at the project site with the Contractors name, project title, and specific delivery point. Receipt of materials is the Contractors responsibility.
 - C.

5. Storage and Protection

- A. Materials used in this project may be stored within a specific assigned room. This material shall be located in such a manner that it does not block fire exit paths, or interfere with normal operations of the occupants. Security of stored items is the Contractors responsibility.
- B. The following onsite storage requirements shall apply:
 - a.) Before installation, store materials and equipment at site:
 - b.) Store in an orderly manner so as not to interfere with other work or obstruct access to buildings or facilities.
 - c.) Protect proactively against theft or damage from any cause and replace items stolen or damaged, at no cost to Owner.
- C. After installation and until final acceptance, respective contractor to be responsible for:
 - a.) Protecting materials and equipment from damage by falling objects, other workmen, etc.
 - b.) Replacing damaged or marred equipment prior to final acceptance.
 - c.) Replacing protective covering removed at any time for any reason.

N. DEMOLITION , CUTTING AND PATCHING

- 1. Demolition shall be performed with care so as not to damage existing construction or equipment to remain. Remove all items and materials as indicated and as required to perform the work.
- 2. Contractor shall be responsible for all cutting, fitting and patching, required to complete the work or to:
 - A. Remove and replace defective work or work not conforming to the requirements of Contract Documents.
 - B. Provide protection for that portion of the Project, which may be exposed by cutting and patching work.
 - C. Restore work, which has been cut or removed; install new products to provide completed work in accord with requirements of Contract Documents.
 - D. Repair any surface damaged by work of this project. Patch to Match: Repair work shall be compatible with existing in all respects
 - E. Refinish surfaces as necessary to provide an acceptable finish to perfectly match adjacent finishes in material, gauge color and texture.

O. PROJECT CLOSEOUT

- 1. Guarantees
 - A. Various items such as Guarantees, are specifically called for and described in various portions of the specifications where they relate to work of a specific item. Original copies of required items shall be filed with the State of Vermont before the project will be closed out and final payment made.
 - B. See also requirements in "Instructions to Bidders".
- 2. Before requesting final payment, submit
 - A. Certificates of Final Completion approval (or final inspection) from all concerned authorities, including but not limited to:
 - a.) Electrical Permits shall be signed off by Electrical inspector having jurisdiction- closed out.

- b.) O&M Manual and an outline of a preventive maintenance program for each item, which shall include a schedule of inspection and maintenance. It shall suggest the maintenance and inspection that should be done.
 - c.) Complete name and address of nearest vendor of replaceable parts.
 - d.) Copy of all guarantees and warranties issued.
- B. Where contents of the manual include manufacturer's catalog pages, clearly indicate the precise items included in this installation and delete, or otherwise clearly indicate, all manufacturer's data with which this installation is not concerned.

P. CLEANING-UP:

1. Contractor and his subcontractors shall clean up upon completion of their work. They shall remove all litter, debris, construction equipment properly and thoroughly clean and leave all areas and finishes as required by the specifications, ready for Owner use.
2. Remove temporary utilities, equipment, facilities, materials, and prior to Final Review.
3. Clean and repair any damage caused by installation.
4. Restore existing facilities used during construction to original condition or better.

END OF SECTION 01001

SECTION 01300 - SUBMITTALS

PART 1 – GENERAL REQUIREMENTS

- A. Submit Product Data on all products and equipment and for Owners review prior to ordering
- B. Submittal Procedures: Coordinate submittal preparation with construction, fabrication, other submittals, and activities that require sequential operations. Transmit in advance of construction operations to avoid delay.
 - 1. Coordinate submittals for related operations to avoid delay because of the need to review submittals concurrently for coordination. The Engineer reserves the right to withhold action on a submittal requiring coordination until related submittals are received.
 - 2. Processing: Allow 1 week for initial review. Allow more time if the Engineer must delay processing to permit coordination. Allow 1 weeks for reprocessing if needed.
 - a. No extension of Contract Time will be authorized because of failure to transmit submittals sufficiently in advance of the Work to permit processing.
 - 3. Submittal Preparation: Place a permanent Cover sheet label on each submittal for identification. Provide a 4- by 5-inch space on the label or beside title block to record review and approval markings and action taken. Include the following information on the label for processing and recording action taken.
 - a. Number the Submittal. Re-submittals shall be numbered the same as original except followed with R1, and second re-submittal R2 etc.
 - b. Project name
 - c. Date
 - d. Name and address of the Project Manager
 - e. Name and address of the Contractor
 - f. Name and address of the Supplier
 - g. Name of the Manufacturer
 - 4. All submittals must be clearly marked as to what is being provided. Use arrows, circles or highlights to indicate make, model, sizes and all accessories intended to be provided. Submittals not clearly marked will be returned not reviewed.
 - 5. Quality Assurance Submittals: Submit quality-control submittals, including design data, certifications, manufacturer's instructions, and manufacturer's field reports required under other Sections of the Specifications.
- C. Review
 - 1. The State of Vermont will review all Submittals to ascertain compliance with Contract documents. Submittals will be marked and returned by the State of Vermont as follows
 - A. REVIEWED

- B. REJECTED AND RESUBMIT
- C. REVISE AND RESUBMIT

2. REVIEW and lack of rejection does not relieve the contractor from contract obligation. Contract documents take precedence over Submittal Review if, in Owner's review a non-compliant aspect is not identified in Review.
3. The State of Vermont will review each submittal, indicating action to be taken, and return. Compliance with specified action characteristics is the Contractor's responsibility.

PART II SPECIFIC REQUIREMENTS

- A. Within 7 days of the date of the letter of intent to award Contract, submit 2 copies the following:

1. Insurance Certificates
2. Bonds
3. Recycling Plan
4. MSDS Sheets
5. Schedule of Values: Break down Bid Price according to the following > Correlate Payment requisitions by % of each completed
 1. General conditions, Bonds
 2. Project management and general overhead
 3. Demolition and disposal / recycling
 4. Installation
 - a. Labor
 - b. Material

- B. PRODUCTS AND MATERIALS SUBMITTALS Within 7 days of Bid Provide Product Shop Drawings as follows:

1. Product Data: Collect Product Data into a single submittal for each element of construction. Mark each copy to show applicable choices and options. Where Product Data includes information on several products, mark copies to indicate applicable information.

Include the following information:

- a. Manufacturer's printed recommendations
- b. Compliance with trade association standards.
- c. Compliance with recognized testing agency standards.
- d. Application of testing agency labels and seals.
- e. Dimensions

C. DELIVERY OF SUBMITTALS TO AND FROM OWNER:

1. Submit Original copies of Bonds, Insurance Certificates, and Applications for payment by US Mail, Fed Ex (or similar) or in person.
2. Submit all other submittals electronically using Adobe PDF documents as an attachment per above requirements by emails.

Send email to: Gary.Sabourin@vermont.gov

3. The Owner will not accept submittals from sources other than the Contractor.

4. Distribution after review: Furnish accepted copies to installers, subcontractors, suppliers, and others required for performance of construction activities. Show distribution on transmittal forms. Do not proceed with installation until a copy of Product Data is in the Installer's possession.

END OF SECTION 1300