
STATE OF VERMONT STANDARD FORM

GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS (May 22, 2019)

The following general conditions are for use with all 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 State-Contractor Agreement; the terms of the State-Contractor Agreement control.

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

The term “State-Contractor Agreement” 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. The “State-Contractor Agreement” will utilize one of the following construction delivery methods: (i) A general contractor hired by the State to provide all services necessary for the construction of the particular project. The general contractor is responsible for completing the particular project for a fixed price; (ii) a construction manager hired by the State to provide professional services and act as a consultant to the State in the design development and construction phases and to deliver the particular project for a Guaranteed Maximum Price; or (iii) a design-build contractor hired by the State to provide both design and construction services, under a single contract, for a particular project.

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the State-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to bid opening and any Change Orders after execution of the Contract.-

1.1.2 THE CONTRACT

The Contract Documents form the contract for 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 the Architect and the Contractor, but the Architect shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the State or the Architect and any Subcontractor or Sub-subcontractor.

1.1.3 THE WORK

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

1.1.4 THE PROJECT

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

1.1.5 PROJECT MANAGER

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.

1.2 EXECUTION & INTENT

1.2.1 Upon request, the State-Contractor Agreement will be signed in duplicate by the State and Contractor.

1.2.2 By executing the Contract, the Contractor represents that he or she has visited and examined the site; is fully informed as to the extent and character of the Project; familiarized himself or herself with the local conditions under which the Work is to be performed, and correlated his / her observations with the requirements of the Contract Documents and understands that no consideration will be given for any alleged misunderstanding of same.

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

1.3.1 All drawings, specifications, estimates, and all other documents, including shop drawings and calculations, prepared at any time in connection with the Project, shall, upon payment for services in connection therewith, become the sole property of the State.

ARTICLE 2

ARCHITECT

2.1 DEFINITION

The term Architect, as used in this document, means a person, or entity, lawfully licensed to practice architecture or a person or entity lawfully licensed to provide professional engineering services and has been identified as such in the State-Contractor Agreement. The term Architect means the Architect or his / her authorized representative. These General Conditions are applicable whether or not an Architect is utilized for a particular project. In the event that an Architect has not been utilized for the project, the Project Manager will be responsible for administration of the contract as specifically enumerated in paragraph 2.2. All other functions, duties, or obligations of the Architect, under these General Conditions, in the absence of an Architect, will be performed by the Project Manager.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Architect will provide administration of the Contract as hereinafter described.

2.2.2 The Architect will be the State's representative during construction and until final payment is due. The Architect will advise and consult with the State. The State's instructions to the Contractor shall be forwarded through the Architect. The Architect will have authority to act on behalf of the State only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.2.10.

2.2.3 The Architect will visit the site at intervals appropriate to the stage of construction to familiarize himself or herself 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. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of his or her on-site observations as an architect, he or she will keep the State informed of the progress of the Work, and will endeavor to guard the State against defects and deficiencies in the Work of the Contractor.

2.2.4 The Architect will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he or she will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not be responsible for or have control or charge over the acts or omissions of the Contractor,

Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.5 The Architect shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Architect may perform his or her functions under the Contract Documents.

2.2.6 Based on the Architect's observations of the Work and an evaluation of the Contractor's Applications for Payment, the Architect will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4 of these General Conditions.

2.2.7 The Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only 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.

2.2.8 The Architect will prepare Change Orders in accordance with Article 12. The Architect has authority to order minor changes in the Work with the consent of the owner.

2.2.9 The Architect will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the State for the State's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

2.2.10 The duties, responsibilities and limitations of authority of the Architect as the State's representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the State and the Architect. In the event that the duties, responsibilities and limitations of authority of the Architect as State's representative during construction as set forth in the Contract Documents is modified or extended, the State will immediately notify the Contractor, in writing, of the modification or extension and the date that the modified or extended authority is effective. If the change of duties, responsibilities, or limitations of authority of the Architect, causes the Contractor to incur new, additional, and unexpected expenses completing the Work, then the State and the Contractor shall agree to an equitable adjustment to be implemented by Change Order to the State-Contractor Agreement.

2.2.11 In case of the termination of the employment of Architect, the State may appoint a subsequent architect in which case, the subsequent architect will have the same status under the Contract Documents as that of the former architect. In the event of termination of the Architect, the State will immediately notify the Contractor, in writing, of the termination and the appointment of a replacement architect, if any.

2.2.12 The Architect will be the interpreter of the requirements of the Contract Documents and will make recommendations to the State regarding the progress and quality of the Work and whether the Work is proceeding in accordance with the Contract Documents.

2.2.13 The Architect will render interpretations necessary for the proper execution and progress of the Work, with reasonable promptness and in accordance with any time limit agreed

upon, in writing, by the Architect, Contractor, and the State.

2.2.14 Claims, disputes and other matters in question between the Contractor and the State relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect for review. The Architect will review the nature of the claim, dispute or other matter, along with any documentation provided by the Contractor or the State, and within a reasonable time, the Architect will provide a written recommendation to the State.

ARTICLE 3

STATE

3.1 DEFINITION

The State of Vermont, by and through the Department of Buildings and General Services is the entity identified as “State” in the State-Contractor Agreement and is referred to throughout the Contract Documents as the “State”.

3.2 RESPONSIBILITIES OF THE STATE

3.2.1 The State will identify a Project Manager for the Project. The Project Manager will be the sole point of contact between the Contractor and the State. The Project Manager will be the State’s representative authorized to communicate the State’s position and directions related to all contract work and to coordinate all change orders with the Commissioner of Buildings and General Services as deemed necessary.

3.2.2 If applicable, the State shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

3.2.3 Except as provided in Subparagraph 4.7.1, 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.

3.2.4 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.

3.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

3.2.6 The State shall forward instructions to the Contractor through the Architect.

3.2.7 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 6, 9 and 11 of this agreement.

3.2.8 The State may utilize a Clerk-of-the-Works to provide inspection and monitoring work on behalf of the State. If a Clerk-of-the-Works is utilized, it is the responsibility of the Architect and the Contractor to review and understand the Clerk's duties, responsibilities and limitations of authority. Upon request, the State shall provide a copy of the Clerk-of-the-Works contract to Architect and Contractor.

3.3 STATE'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or persistently 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 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 6.1.3.

3.4 STATE'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven 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 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 Architect's and the State's additional services made necessary by such default, neglect or failure. Such action by the State and the amount charged to the Contractor are both subject to review by the Architect under Paragraph 2.2.14 of these General Conditions. 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 Owner.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

The Contractor is the person or entity identified as such in the State Contractor Agreement and is referred to throughout the Contract Documents as Contractor. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall immediately report in writing to the Architect and the State any error, inconsistency or omission he may discover. The Contractor shall not be liable to the State or the Architect for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The

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

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using his / her 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. Contractor guarantees to repair, replace, re-execute or otherwise correct any defect in workmanship, materials, or the like that fails to conform to the requirements of this Contract or that appears during the progress of the Work or within one year of final acceptance by the State.

4.3.2 The Contractor shall be responsible to the State for the acts and omissions of his / her employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from his / her obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect in his / her administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

4.3.4 The Contractor shall acquaint himself (herself / itself) with the limits of the property or right-of-way of the State and shall not trespass on other property. The Contractor shall adequately protect the project, adjacent property and the public, and shall be responsible for any damage or injury due to the Contractor's act or neglect, and shall save the State harmless in respect thereto.

4.3.5 All work shall be done in such a manner as not to interfere with the State's operating functions. Contractor and his employees shall familiarize themselves and comply with all rules and regulations applicable to the project.

4.3.6 The Contractor shall keep the premises free from liens arising out of or from the Project. Contractor shall obtain and submit waivers of liens with a request for a progress or final payment.

4.4 LABOR AND MATERIALS

4.4.1 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. Contractor guarantees that materials shall be of the best quality, that work shall be completed in a neat and workmanlike manner, that equipment will be installed in a first class manner, and that all aspects of the project will be delivered in good working order complete and perfect in every respect and that all systems and materials necessary to make the project a complete operating utility as contemplated by the above description of the project is included in the Contract price.

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

4.5 WARRANTY

4.5.1 The Contractor warrants to the State and the Architect 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 Architect or 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.

4.6 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.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received. Contractor shall comply with the regulations and requirements of any insurance company which issues a policy on any part of the work or site.

4.7.2 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.

4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. However, if the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he / she shall promptly notify the Architect in writing, and any necessary changes shall be accomplished by appropriate modification.

4.7.4 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he / she shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.7.5 The 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>

4.8 ALLOWANCES

4.8.1 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.

4.8.2 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;

(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 cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

The 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.

4.10 PROGRESS SCHEDULE

The Contractor, within ten (10) working days of receiving notice of the award of the contract, shall prepare and submit for the State's and Architect'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.

4.11 DOCUMENTS AND SAMPLES AT THE SITE

4.11.1 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 Architect and 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 Architect for the State and a duplicate copy shall be delivered to the State for the State's use.

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.12.1 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.

4.12.2 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.

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

4.12.4 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.

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

4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.7 of these General Conditions unless the Contractor has specifically informed the Architect and the State in writing of such deviation at the time of submission and the Architect 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 Architect's approval thereof.

4.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.12.8 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 Architect as provided in Subparagraph 2.2.7 of these General Conditions. All such portions of the Work shall be in accordance with approved submittals.

4.13 USE OF SITE

4.13.1 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 CUTTING AND PATCHING OF WORK

4.14.1 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.

4.14.2 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 his consent to cutting or otherwise altering the Work.

4.15 CLEANING UP

4.15.1 Before commencement of any on-site activities, Contractor is required to prepare and submit to the Project Manager a Construction Site Waste Reduction Plan. 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 the contractor's monthly requisition until Contractor has rectified the situation and is in full compliance with these provisions.

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

4.15.3 If the Contractor fails to clean up at the completion of the Work, the State may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Contractor.

4.16 COMMUNICATIONS

4.16.1 The Contractor shall forward all communications to the State through the Architect.

4.17 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, The Contractor shall be responsible for such loss unless he promptly gives such information to the Architect.

4.18 INDEMNIFICATION

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

SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor means a Subcontractor or his / her authorized representative. The term Subcontractor does not include any separate contractor or his / her subcontractors.

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

5.2 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:

5.2.1 The Parties agree that it is in the best interests 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 and the Architect 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 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.

5.2.2 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 5.2.1 of these General Conditions. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.2.3 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 5.2.1. of these General Conditions.

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

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 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 and the Architect. Said agreement shall preserve and protect the rights of the State and the Architect 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 his 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 5.3, 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 his / her Sub-subcontractors.

ARTICLE 6

WORK BY STATE OR BY SEPARATE CONTRACTORS

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

6.1.1 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, he / she shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 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.

6.1.3 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.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the State and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his / her Work with the work of the State and separate contractors as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the State or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Architect 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

his Work, except as to defects which may subsequently become apparent in such work by others.

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

6.2.4 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 10.2.5 of these General Conditions.

6.3 STATE'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.15 of these General Conditions, the State may clean up and charge the cost thereof to the Contractor.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

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

7.2 SUCCESSORS AND ASSIGNS

7.2.1 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 him or her hereunder, without the previous written consent of the State.

7.3 WRITTEN NOTICE

7.3.1 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.

7.4 CLAIMS FOR DAMAGES

7.4.1 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 his / her employees, agents or others for whose acts he / she 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.

7.5 BOND REQUIREMENTS

The Contractor hereby agrees to comply with the State's bonding requirements as identified in the Instructions to Bidders which are included in the RFP and are attached and incorporated into the Contract Documents.

7.6 RIGHTS AND REMEDIES

7.6.1 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.

7.6.2 No action or failure to act by the State, Architect 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.

7.7 TESTS

7.7.1 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 Architect timely notice of its readiness so the Architect may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.

7.7.2 If the Architect determines that any Work requires special inspection, testing, or approval which Subparagraph 7.7.1 does not include, he or she will, upon written authorization from the State, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. 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, including compensation for the Architect's additional services made necessary by such failure; otherwise the State shall bear such costs, and an appropriate Change Order shall be issued.

7.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Architect.

7.7.4 If the Architect is to observe inspections, tests or approvals required by the Contract Documents, he will do so promptly.

7.8 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due 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 all required supporting documentation.

7.9 DISPUTE RESOLUTION PROCESS

Any claim, dispute or other matter in question not resolved by the process identified in Paragraph

2.2.14 of these General Conditions shall be subject to the following dispute resolution process: Contractor may seek review by the Commissioner of Buildings and General Services of the Architect's recommendation. Contractor must seek review by the Commissioner within ten (10) days of the Architect's written recommendation otherwise the recommendation shall be deemed accepted by the Contractor. Failing resolution by the Commissioner, the Contractor then may request that the parties submit the claim to non-binding mediation with a mutually agreed upon mediator utilizing the most current Construction Industry Mediation Rules of the American Arbitration Association.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3 of these General Conditions, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date indicated in State Contractor Agreement. In the absence of a notice to proceed and an express commencement date in the State Contractor Agreement, then the date of execution of the State Contractor Agreement shall be the commencement date.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the State can occupy or utilize the Work or designated portion thereof for the use for which it is intended. The Work shall not be considered substantially complete prior to the receipt of approved O & M manuals and record drawings as required by paragraph 4.11 and as required elsewhere in the Contract Documents.

8.1.3.1 Contract completion date shall be defined as: The contract work shall not be considered complete prior to the receipt of approved O & M manuals and record drawings as required by paragraph 4.11 and as required elsewhere in the contract documents.

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

8.2 PROGRESS AND COMPLETION

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

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in

Subparagraph 8.1.2 of these General Conditions. He or She shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

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 of said project within the time specified above, or to prosecute 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 by Certified Mail that the terms of the Contract have been violated, and that effective immediately the Contract is terminated and the State has the right to and in fact is taking over and attending to completion of the project without prejudice to the State's remedies for any losses sustained

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 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 the Architect, or by any employee of either, or by any separate contractor employed by 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 recommended by the Architect and approved by the State.

8.3.2 Any claim for extension of time shall be made in writing to the Architect 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.

8.3.3 This Paragraph 8.3 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

9.1.1 The Contract Sum is stated in the State-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the State to the Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used only as a basis for the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date for each progress payment established in the State-Contractor Agreement, the Contractor shall submit to the Architect an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the State or the Architect may require. The application for payment must, at a minimum, reflect retainage and the required waivers of lien and any other support documentation enumerated elsewhere in the Contract Documents.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, 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

9.4.1 The Architect will, within seven days after the receipt of the Contractor's completed Application for Payment, either issue a Certificate for Payment to the State, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor in writing his or her reasons for withholding a Certificate as provided in Subparagraph 9.6.1 of these General Conditions. In case of conflict between any time requirements in this paragraph and any time requirements for action by the Architect on Contractor's Application for Payment contained in the State-Contractor Agreement, the time requirements contained in the State-Contractor Agreement shall control.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the State, based on his observations at the site as provided in Subparagraph 2.2.3 of these General Conditions and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his or her 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 his Certificate); and that the Contractor is entitled to payment in the amount certified.

9.5 PROGRESS PAYMENTS

9.5.1 After the Architect has issued a Certificate for Payment, the State shall make payment in the manner and within the time provided in the Contract Documents.

9.5.2 The Contractor shall promptly pay each 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 his or her Sub-subcontractors in similar manner.

9.5.3 The Architect may, on request and at his 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 Architect on account of Work done by such Subcontractor.

9.5.4 Neither the State nor the Architect shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor.

9.5.5 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 Architect may decline to certify payment and may withhold his or her Certificate in whole or in part, to the extent necessary reasonably to protect the State, if in the Architect's opinion he or she is unable to make representations to the State as provided in Subparagraph 9.4.2 of these General Conditions. If the Architect is unable to make representations to the State as provided in the aforementioned Subparagraph 9.4.2 and to certify payment in the amount of the Application, he or she will notify the Contractor as provided in Subparagraph 9.4.1 of these General Conditions. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which he or she is able to make such representations to the State. The Architect may also decline to certify 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 above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the State does not pay the Contractor within seven days after the date established in the Contract Documents any amount certified by the Architect or awarded by alternative dispute resolution proceedings, then the Contractor may, upon seven additional days written notice to the State and the Architect, 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 which has been accepted in writing to by the State, is substantially complete as defined in Subparagraph 8.1.3 of these General Conditions, the Contractor shall prepare for submission to the Architect a 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. When the Architect on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion which 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 Certificate of Substantial Completion shall be submitted to the State and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Work shall not be considered substantially complete prior to the receipt of approved O & M manuals and record drawings as required by paragraph 4.11 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 and certification by the Architect, the State shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such

inspection and, when he or she finds the Work acceptable under the Contract Documents and the Contract fully performed, he or she will promptly issue a final Certificate for Payment stating that to the best of his / her knowledge, information and belief, and on the basis of his or her 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 final Certificate, is due and payable. The Architect's final Certificate for Payment will constitute a further representation that the Contractor has fulfilled the conditions entitling him or her to final payment as set forth in Subparagraph 9.9.2 of these General Conditions.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Architect (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 final payment; (3) Other data establishing payment or satisfaction of all such obligations, including, but not limited to, receipts, releases, or other supporting documentation. and (4) final 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 to indemnify him against 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 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, and the Architect so confirms, the State shall, upon application by the Contractor and certification by the Architect, 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 Architect prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.4 The making of final payment shall constitute a waiver of all claims by the State except those arising from:

- (a) unsettled liens,
- (b) faulty or defective Work appearing after Substantial Completion,
- (c) failure of the Work to comply with the requirements of the Contract Documents, or
- (d) terms of any special warranties required by the Contract Documents.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

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 his 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 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 Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations referenced under Paragraph 4.18.

10.2.7 The Contractor shall designate a responsible member of his 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 and the Architect.

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

10.3.1 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 INSURANCE – GENERAL REQUIREMENTS

11.1 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:

Premises Operations
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.

- (c) 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

- (d) The 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 (c) above.

- (e) Scope of Insurance & Special Hazards: The insurance required under subparagraphs (b), (c), and (d) above shall provide protection for the Contractor and the Subcontractors, if any, against damage claims which may arise from work being performed. Special hazards, may be encountered by the insured or by any person directly or indirectly employed by the Contractor or a Subcontractor, and may be required.

- (f) 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.

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 of Vermont, Office of Purchasing & Contracting.

11.2 Insurance Requirements for Builder's Risk Insurance. The State of Vermont does not require Contractor to obtain Builder's Risk insurance for every construction project. The State of Vermont will evaluate each project prior to accepting bids to determine if the State will require the Contractor to obtain and maintain Builder's Risk insurance for the project.

Any project that involves NEW CONSTRUCTION will require the Contractor to obtain and maintain Builder's Risk insurance for the project.

At the discretion of the State, Contractor may not be required to obtain and maintain Builder's Risk insurance on CONSTRUCTION RENOVATION projects. Whether or not the State is going to require Contractor to obtain and maintain Builder's Risk insurance for a particular CONSTRUCTION RENOVATION project will be determined by the State prior to bidding the project and the requirement will be included in the Instructions to Bidders.

11.2.1 BUILDER'S RISK FOR NEW CONSTRUCTION PROJECTS. If the project is NEW CONSTRUCTION, then the following provisions apply:

- (1) The State will require Contractor to 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.
- (2) Contractor shall effect 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.
- (3) Any deductible applicable to loss covered by insurance provided hereunder shall be borne by the Contractor.
- (4) Except as provided for in (1) above the State and Contractor waive all rights against each other and the Subcontractor, Sub-subcontractors, agents and employees of the other.

11.2.2 BUILDER'S RISK FOR CONSTRUCTION RENOVATION PROJECTS. If the project is CONSTRUCTION RENOVATION of an existing structure, and the State has already determined that Contractor will not be obligated to obtain and maintain Builder's Risk insurance, then the following provisions apply:

- (1) 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.
- (2) 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.
- (3) Contractor shall effect 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.
- (4) Except as provided for in 11.2.2 (1)-(3) above the State and Contractor waive all rights against each other and the Subcontractor, Sub-subcontractors, agents and employees of the other.

11.2.3 Builder's Risk – additional provisions

The insurance specified shall be maintained in force until final acceptance of the project by the State.

- (5) Umbrella Excess Liability Policies may be used in conjunction with primary policies to comply with any of the limit requirements specified above.
- (6) "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 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.

- (7) 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.

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

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed by the State, the Architect, and the Contractor issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time. A Proposed Change Order (PCO) is a written request submitted to the Architect by either the Contractor or the State requesting a change to the contract price and / or schedule. A Construction Change Directive (CCD) is a written document prepared by the State and / or Architect directing the Contractor to make changes in the Work where the State and the Contractor have not reached an agreement on proposed changes in the contract sum or contract time. A Construction Change Directive becomes part of a PCO.

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

12.1.2 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 Time being adjusted accordingly. All such changes in the Work REQUIRE AGREEMENT IN WRITING BY THE ARCHITECT, STATE AND CONTRACTOR AND shall be authorized by A PROPOSED Change Order (PCO), and shall be performed under the applicable conditions of the Contract Documents. The State will prescribe a Proposed Change Order form for use by the Contractor. The Contractor shall submit all requests for Proposed Change Orders on the prescribed form.

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

- (1) A Proposed Change Order (PCO) is submitted to the Architect for review. Said PCO is to be submitted on the State approved form.
- (2) If the PCO originated with the Contractor, the Architect will review the PCO and if the Architect approves the PCO, it is then presented to the State for approval.
- (3) The PCO is signed by the Project Manager.
- (4) The Project Manager shall coordinate with the Contractor through email or other written documentation every 30 days as to the merit of issuing a Change Order. If the Project Manager and Contractor agree that a Change Order should be submitted, the Architect will compile all approved PCOs and incorporate them into one (1) Change Order.
- (5) The Change Order is then submitted to the Project Manager who immediately processes the CO with OPC as required by Bulletin 3.5 and BGS' Contracting Plan.

12.1.3 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 12.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.3(a) –(d) 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 he receives a Construction Change Directive (CCD)) signed by the State, shall promptly proceed with the Work involved. Upon receipt of the CCD, the Contractor shall proceed with implementation of the CCD. The cost of such Work shall then be recommended by the Architect 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 12.1.3(c) and 12.1.3(d) above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data for inclusion in the CCD. 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 State'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 Architect. 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 / incorporated into a PCO within Thirty (30) days of completion of the changes to the Work that was the subject of the CCD. The parties agree to utilize the CCD form provided or approved by the State.

12.1.5 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 in- equity 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, he shall give the Architect 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 by the Architect. 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 3.3 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 Architect 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 10 days unless the Contractor or the State objects to the change in writing.

ARTICLE 13

UNCOVERING AND CORRECTION 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 Architect or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for his or her 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 Architect has not specifically requested to observe prior to being covered, the Architect 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 6 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 be responsible for correcting all Work which the Architect 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 Architect's and the State's additional services made necessary thereby.

The Architect, upon a finding of defect or failure to conform, shall immediately notify the State and 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 Subparagraphs 4.5.1, 13.2.1 and 13.2.2 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 Subparagraphs 4.5.1, 13.2.1 and 13.2.2, the State may correct it in accordance with Paragraph 3.4 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 fixed by written notice from the Architect, 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 days thereafter, the State may upon ten 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, including compensation for the Architect's 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 4.5 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 his 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 his obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 The State may accept defective or nonconforming Work pursuant to Paragraph 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 Architect will recommend to the State the value of diminishment of the defective or nonconforming Work. Such adjustment shall be effected whether or not final payment 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 days by the Contractor because the Architect has not issued a Certificate for Payment as provided in Paragraph 9.7 of these General Conditions or because the State has not made payment thereon as provided in Paragraph 9.7, then the Contractor may, upon seven additional days written notice to the State and the Architect, 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 a bankrupt, or if he or she makes a general assignment for the benefit of his/ her creditors, or if a receiver is appointed on account of his/ her insolvency, or if he or she 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 he or she fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the State, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days written notice, terminate the employment of the Contractor 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 he 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 the Architect's and State's additional services and expenses made necessary thereby, exceed the unpaid balance of the Contract Sum, the Contractor 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 Architect's and the State's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor.

The amount owed by Contractor to the State shall be certified by the Architect, upon application, in the manner provided in section 9.4 of these General Conditions, and this obligation for payment 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 into 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 CONVEVIENCE

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 section 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.