
**STATE OF VERMONT
STANDARD FORM**

GENERAL CONDITIONS FOR DESIGN BUILD CONTRACTS (May 22, 2019)

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

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

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

ARTICLE 1: CONTRACT DOCUMENTS

1.1 DEFINITIONS

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

1.1.2 THE CONTRACT DOCUMENTS

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

1.1.3 THE CONTRACT

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

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

1.1.4 THE WORK

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

1.1.5 THE PROJECT

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

1.2 EXECUTION & INTENT

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

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

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

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

1.3 OWNERSHIP AND USE OF DOCUMENTS

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

ARTICLE 2: DESIGN PROFESSIONAL

2.1 DEFINITION

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

2.2 RESPONSIBILITIES

The Contractor acknowledges and agrees that:

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

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

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

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

2.3 ADMINISTRATION OF THE CONTRACT

The Contractor acknowledges and agrees that:

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

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

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

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

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

ARTICLE 3: OWNER ("STATE")

3.1 DEFINITION

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

3.1.2 The term "Project Manager" refers to the employee of the State who has been assigned responsibility for overseeing and managing the proper and timely implementation of the project. 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.

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

3.2 RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

3.3 ADMINISTRATION OF THE CONTRACT

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

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

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

ARTICLE 4: CONTRACTOR

4.1 DEFINITION

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

4.2 GENERAL RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

4.3 PROGRESS SCHEDULE AND REPORTS

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

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

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

4.4 COMMUNICATIONS

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

4.5 DESIGN OF THE WORK

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

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

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

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

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

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

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

4.6 INTIATION OF CONSTRUCTION

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

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

4.7 LABOR AND MATERIALS

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

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

4.8 WARRANTY AND CERTIFICATIONS

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

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

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

4.9 TAXES

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

4.10 PERMITS, FEES AND NOTICES

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

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

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

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

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

4.11 ALLOWANCES

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

4.11.2 Unless otherwise provided in the Contract Documents:

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

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

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

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

4.12 DOCUMENTS AND SAMPLES AT THE SITE

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

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

4.13 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

4.14 USE OF AND ACCESS TO SITE

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

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

4.15 CUTTING AND PATCHING OF WORK

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

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

4.16 HAZARDOUS MATERIALS

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

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

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

4.17 CLEANING UP

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

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

4.18 ROYALTIES AND PATENTS

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

4.19 INDEMNIFICATION

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

ARTICLE 5: COMMISSIONING SERVICES

5.1 DEFINITIONS

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

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

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

5.2 RESPONSIBILITIES

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

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

6 ARTICLE 6: SUBCONTRACTORS

6.1 DEFINITIONS

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

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

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

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

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

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

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

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

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

6.3 SUBCONTRACTUAL RELATIONS

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

7 ARTICLE 7: WORK BY STATE OR SEPARATE CONTRACTORS

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

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

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

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

7.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

7.3 STATE'S RIGHT TO CLEAN UP

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

ARTICLE 8: TIME

8.1 DEFINITIONS

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

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

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

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

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

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

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

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

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

8.2 PERFORMANCE, DELAYS AND EXTENSIONS OF TIME

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

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

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

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

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

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

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

ARTICLE 9: PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

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

9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

9.4 CERTIFICATES FOR PAYMENT

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

9.5 PROGRESS PAYMENTS

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

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

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

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

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

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

9.6 PAYMENTS WITHHELD

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

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

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

9.7 FAILURE OF PAYMENT

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

9.8 SUBSTANTIAL COMPLETION

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

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

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

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

9.9 FINAL COMPLETION AND PAYMENT FOR FINAL COMPLETION

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

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

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

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

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

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

9.10 CONTRACT CLOSE-OUT AND PAYMENT FOR CONTRACT COMPLETION

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

ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

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

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

10.3 EMERGENCIES

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

ARTICLE 11: INSURANCE

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

11.1 INSURANCE – GENERAL REQUIREMENTS

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

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

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

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

Limits of Coverage shall be not less than:

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

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

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

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

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

- (c) *Professional Liability Insurance:* Before commencing work on this Agreement and throughout the term of this Agreement, all Design Professionals shall procure and maintain professional liability insurance for all professional services performed under this Agreement, with minimum coverage as required by the Agency of Administration but not less than \$1,000,000 per claim and \$2,000,000 policy aggregate.
- (d) *Automobile Liability Insurance:* Contractor shall carry Automobile Liability Insurance covering all motor vehicles, including owned, hired, borrowed and non-owned vehicles, used in connection with the project. Limits of Coverage shall be not less than:

\$1,000,000 Combined Single Limit

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

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

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

11.2 INSURANCE REQUIREMENTS FOR BUILDER'S RISK INSURANCE

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

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

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

construction/renovation projects.

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

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

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

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

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

ARTICLE 12: CHANGES IN THE WORK

12.1 DEFINITIONS

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

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

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

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

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

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

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

- (a) If the Proposed Change Order (PCO) originates from the Contractor, the Contractor signs and submits the PCO to the State on the prescribed form.
- (b) If the PCO originates from the State, the Project Manager submits the PCO to the Contractor for its review and signature, then presents the PCO to the State for approval.
- (c) The PCO is signed by the Project Manager.
- (d) 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 Contractor, will compile all approved PCOs and include into one (1) Change Order.
- (e) The Change Order is then submitted to the Project Manager who then processes the Change Order.

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

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

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

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

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

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

12.2 CONCEALED CONDITIONS

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

12.3 CLAIMS FOR ADDITIONAL COST

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

resulting from such claim shall be authorized by Change Order.

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

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

ARTICLE 13: UNCOVERING AND CORRECTING OF WORK

13.1 UNCOVERING OF WORK

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

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

13.2 CORRECTION OF WORK

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

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

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

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

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

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

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

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

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

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

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

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

ARTICLE 14: TERMINATION AND SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

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

14.2 TERMINATION BY THE STATE FOR CAUSE

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

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

14.3 TERMINATION BY STATE FOR CONVENIENCE

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

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

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

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

14.4 SUSPENSION BY STATE FOR 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 Subparagraph 14.4.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

14.5 STATE'S RIGHT TO STOP THE WORK

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

14.6 STATE'S RIGHT TO CARRY OUT THE WORK

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

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

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 GOVERNING LAW

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

15.2 SUCCESSORS AND ASSIGNS

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

15.3 WRITTEN NOTICE

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

15.4 CLAIMS FOR DAMAGES

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

15.5 BOND REQUIREMENTS

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

15.6 RIGHTS AND REMEDIES

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

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

specifically agreed in writing.

15.7 TESTS

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

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

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

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

15.8 INTEREST

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

15.9 DISPUTE RESOLUTION PROCESS

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