

# DRAFT AIA® Document A104™ – 2017

## Standard Abbreviated Form of Agreement Between Owner and Contractor

**AGREEMENT** made as of the « » day of « » in the year «2025 »  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

« Capital Region Development Authority (CRDA) »  
« 100 Columbus Boulevard, Suite 500 »  
« Hartford, CT 06103 »

« Note: The Capital Region Development Authority (CRDA) currently operates Pratt & Whitney Stadium at Rentschler Field on behalf of the Office of Policy and Management (OPM - the building's owner), the project is being funded by the State of Connecticut and funding will be administered by the Capital Region Development Authority (CRDA). CRDA will oversee Construction. Where "Owner" appears in the Invitation to Bid (sometimes referred to herein as the "RFP" and attached hereto as Attachment 1a) and elsewhere in the contract documents, it shall generally refer to CRDA.

and the Contractor:  
(Name, legal status, address and other information)

« »  
« »  
« »  
« »

for the following Project:  
(Name, location and detailed description)

« Rentschler Field Tower Roof Replacement »  
« CRDA Project No.25-024 »  
« 615 Silver Lane »  
« East Hartford, CT 06118 »

The Architect:  
(Name, legal status, address and other information)

« Use of "Architect" or "Engineer" in the Contract Documents shall mean: »  
« Silver Petrucelli + Associates, Inc.»  
« 3190 Whitney Ave »  
« Hamden, CT 06518 »

The Owner and Contractor agree as follows:

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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### ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in, reasonably inferable from, and as necessary to to produce the results intended by, the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☒ The date of this Agreement.

☐ A date set forth in a notice to proceed issued by the Owner.

[ ☐ » ] Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

« ☐ »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time for completion of on-site construction shall be measured from the Date of this Agreement.

### § 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

[ ☐ » ] Not later than ☐ ( « » ) months from the date of commencement of the Work.

[ ☒ » ] By the following date: ☐ »

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

### Not Applicable

## ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[ ☒ » ] Stipulated Sum, in accordance with Section 3.2 below

[ ☐ » ] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[ ☐ » ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be xxxxxx Dollars , subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

**§ 3.2.2** Unit prices, if any:

*(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
labor & equipment rates listed in attachment 4a		

**§ 3.2.3** Allowances, if any, included in the stipulated sum:

*(Identify each allowance.)*

Item	Price
	\$

**§ 3.3 Cost of the Work Plus Contractor's Fee**

**§ 3.3.1** The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

**Not Applicable**

**§ 3.3.2** The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)*

**Not Applicable**

**§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price**

**§ 3.4.1** The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

**Not Applicable**

**§ 3.4.2** The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)*

**Not Applicable**

**§ 3.4.3 Guaranteed Maximum Price**

**§ 3.4.3.1** The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed « » (\$ « »), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

*(Insert specific provisions if the Contractor is to participate in any savings.)*

**Not Applicable**

**§ 3.4.3.2** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

**Not Applicable**

**§ 3.4.3.3 Unit Prices, if any:**

*(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
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**Not Applicable**

**§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:**

*(Identify each allowance.)*

Item	Price
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**Not Applicable**

**§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:**

**Not Applicable**

**§ 3.4.3.6** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**Not Applicable**

**§ 3.4.3.7** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

**Not Applicable**

**§ 3.5 Liquidated damages, if any:**

*(Insert terms and conditions for liquidated damages, if any.)*

**Not Applicable**

**ARTICLE 4 PAYMENT**

**§ 4.1 Progress Payments**

**§ 4.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 4.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 4.1.3 Provided that a “pencil copy” Application for Payment is received by the Architect not later than the «twenty-fifth» day of a month, along with the information and supporting documentation required by the Contract Documents and such additional information and documentation as may be reasonably requested by the Architect or the Owner (collectively, “Supporting Documentation”) for Work performed in the previous month, and a final Application for Payment is received by the Architect not later than the first day of the following month, the Owner shall make payment of the certified amount to the Contractor within thirty (30) days after the Architect’s receipt of the final approved version of such Application for Payment. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than «thirty» («30») days after the Architect receives and approves the final version of the Application for Payment. Each Application for Payment submitted by the Contractor shall include a statement showing the status of all pending construction change orders, other pending change directives and approved changes to the original Contract or Subcontract. Such statement shall identify the pending construction change orders and other pending change directives and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any work completed. As used in this subsection, “pending construction change order” or “other pending change directive”, means an authorized directive for extra work that has been issued to the Contractor or a Subcontractor.

The Contractor, within five (5) days after payment to the Contractor by the Owner shall pay any amounts due any Subcontractor or supplier, whether for labor performed or materials or equipment furnished, when the labor, equipment or materials have been included in a requisition submitted by the Contractor and paid by the Owner. The Contractor shall promptly give notice to the Owner of any claim or demand by a Subcontractor or supplier claiming that any amount is due to such Subcontractor or supplier or claiming any default by the Contractor in any of the Contractor’s obligations to such Subcontractor or supplier.

The Contractor shall include in each of its Subcontracts and supply agreements a provision requiring each Subcontractor and lower tier supplier to pay any amounts due any of their respective Sub-subcontractors (as defined in Section 11.1) and lower tier suppliers, whether for labor performed or materials or equipment furnished, within five (5) days after such Subcontractor or supplier receives a payment from the Contractor which encompasses labor or materials or equipment furnished by the Sub-subcontractor or lower tier supplier and a provision requiring each Subcontractor and supplier to promptly give notice to the Contractor of any claim or demand by a Sub-subcontractor or lower tier supplier claiming that any amount is due to such Sub-subcontractor or lower tier supplier or claiming any default by such Subcontractor or supplier in any of its obligations to such Sub-subcontractor or lower tier supplier which notice the Contractor shall promptly relay to the Owner.

§ 4.1.4 In connection with each progress payment, the Owner may withhold retainage from the payment otherwise due as follows:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)*

Retainage of Five Percent (5%) shall be withheld from all payments due from the Owner to the Contractor hereunder. The Contractor shall not withhold greater than Five Percent (5%) retainage from payments to Subcontractors. Thirty (30) days following acceptance of Work completed pursuant to Section 15.7, the Owner will release retainage held for completed Work, with CHRO approval.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest only to the extent required by Connecticut law and, if so required, at the minimum rate required.

## § 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, along with such Supporting Documentation as is required herein and such additional information as may be reasonably requested by the Owner.

§ 4.2.3 At the Owner's request, the Contractor shall also furnish to the Owner and the Architect prior to final payment such information as required by the Architect to produce in a format acceptable to the Owner a complete record set of drawings and specifications depicting the completed Project.

§ 4.3 Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make payment to the Contractor hereunder to the extent any one or more of the following conditions exist:

- .1 The Contractor is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents;
- .2 Any part of such payment is attributable to Work which the Owner or Architect determines that, because of the fault or neglect of the Contractor, any Subcontractor, Sub-subcontractor or lower tier supplier is defective or not performed in accordance with the Contract Documents; provided, however, such payment shall be made as to the part thereof attributable to the Work which is performed in accordance with the Contract Documents and is not otherwise defective; or
- .3 The Contractor has failed to make payments properly to the Contractor's Subcontractors or suppliers for material or labor used in the Work for which the Owner has made payment to the Contractor.

§ 4.4 The Contractor shall use the sums advanced to it solely for the purpose of performance of the Work and the construction, furnishing, and equipping of the improvements in accordance with the Contract Documents.

§ 4.5 Commencing with the second Application for Payment, and continuing with each Application for Payment submitted thereafter, the Contractor shall furnish to the Owner a properly executed release and waiver of claims/mechanics liens from the Contractor and each Subcontractor and material or equipment supplier whose Work was included on the previous Application for Payment for which payment by Owner was made to the Contractor.

§ 4.6 The Architect will prepare Change Orders and issue Certificates for Payment. Notwithstanding anything to the contrary in the Contract Documents, neither the Contract Sum nor the Contract Time shall be adjusted if the increased costs or delay underlying the Contractor's claim for adjustment stems from the negligent act or omission of the Contractor, Subcontractors, Sub-subcontractors, or of anyone for whose performance the Contractor is responsible to the Owner, or as a result of the error of any of the same or of the failure of any of the same to comply with, and fulfill their responsibilities under, the Contract Documents.

## ARTICLE 5 DISPUTE RESOLUTION

### § 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 21.6 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.



## ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, as herein modified.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203–2013 incorporated into this Agreement.)*

### Not Applicable

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Schedule A	State of CT Terms and Conditions	June 7, 2024	9

§ 6.1.4 The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Specifications attached hereto as Schedule A2

Section	Title	Date	Pages

§ 6.1.5 The Drawings:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Drawings attached hereto as Schedule A1

Number	Title	Date

§ 6.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6. Portions of the Addenda included in the Bid Documents that relate to the Project Scope of Work are included in the Contract Documents and are attached here to as Attachment 1b, Bid Addendums 1- 2.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

*(Check all boxes that apply.)*

☐ Exhibit A, Determination of the Cost of the Work.

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

☐ The Sustainability Plan:



Title	Date	Pages

[ « X » ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Schedule B	State of CT Terms and Conditions		

- .2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents.)*

Attachment 1a	Instructions to Bidders
Attachment 1b	Addendum.
Attachment 2a	Contractor's Bid Form Submission, to the extent not inconsistent with the terms of this Agreement.
Attachment 2b	Schedule of Values
Attachment 3	Required State Forms
Attachment 4a	Labor & Equipment Rates (for change order work)
Schedule A1	Drawings
Schedule A2	Specifications
Schedule B	Standard Vendor Terms and Conditions

## ARTICLE 7 GENERAL PROVISIONS

### § 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. If the Contractor discovers any inconsistency within, between or among parts of the Contract Documents or between the Contract Documents and applicable standards, codes or ordinances, the Contractor shall give notice to the Owner and the Architect of such inconsistency and shall, unless otherwise ordered in writing by the Architect or the Owner, provide work or materials of the better quality, greater quantity, or that otherwise comply with applicable standards, codes and ordinances.

### § 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

### § 7.3 The Work

§ 7.3.1 The term "Work" means the construction and services required by, reasonably inferable from, and as necessary to produce the results intended by, the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, machinery and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 7.3.1.1 Where no explicit quality or standards for materials or workmanship are established for any portion of the Work, the Contractor shall perform such Work in a good and workmanlike manner and in a manner of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

**§ 7.3.1.2** All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

**§ 7.3.2 CONTRACTOR'S STANDARD OF CARE**

**§ 7.3.2.1** The Contractor shall be responsible for the performance of the Work as an independent contractor and in a good and workmanlike manner (i) consistent with the Contract Documents; (ii) consistent with the instructions, guidance and direction of the Owner and Architect; (iii) consistent with the prevailing applicable professional and industry standards; (iv) consistent with sound practices; (v) as expeditiously as is consistent with such professional skill and care and the orderly progress of the Work and with the Contract Documents and the instructions, guidance and direction of the Owner and Architect; and (vi) in a manner that will not exceed the Contract Sum as it may be adjusted in accordance with the Contract Documents (the standards of this Section 7.3.2.1 shall be referred to herein as the "Contractor's Standard of Care").

The Contractor shall exercise the Contractor's Standard of Care in performing all aspects of the Work. All references in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Contractor or reference to any similar term shall include the constructive knowledge, inference, reliance, awareness, determination, belief, observation, recognition attributed to the Contractor ("constructive knowledge"). Such constructive knowledge shall include the knowledge, inference, reliance, awareness, determination, belief, observation and recognition the Contractor would have obtained upon the exercise of the Contractor's Standard of Care.

**§ 7.3.2.2** The Contractor shall be responsible for the performance of the Work in accordance with all statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work and the Conditions (as defined hereinafter). The Contractor shall obtain and post all necessary permits at the Project site. The term "Conditions" shall mean and include all applicable laws, rules, regulations, ordinances, codes, orders, guidelines, standards and conditions of funding imposed on the Work and/or Project by the Agencies, as defined hereinafter. Any reference in the Contract Documents to "applicable law" or "applicable laws" shall include all of the Conditions.

**§ 7.3.2.3** The "Agencies" are the governmental authorities having regulatory or administrative jurisdiction over the Work and/or the Project and all representatives or designees of such governmental authorities.

**§ 7.3.2.4** Notwithstanding anything to the contrary in this Agreement, the Contractor shall attend such meetings and site visits, and make such submissions, as are necessary to comply with applicable law.

**§ 7.3.2.5** Any information obtained by the Contractor from the Owner or Architect may not be used, published, distributed, sold or divulged by the Contractor, Subcontractors or Sub-subcontractors (as defined in Section 11.1 hereafter) for such party's own purposes or for the benefit of any person, firm, corporation or other entity other than the Owner, without the prior written consent of the Owner. Any information obtained by the Contractor, Subcontractors or Sub-subcontractors that is designated by the Owner in accordance with applicable law as confidential shall not be disclosed to any other parties without the prior written consent of the Owner.

**§ 7.3.2.6** Pursuant to the requirements of CGS §4a-60:

(a)(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved;

(2) The Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an “affirmative action-equal opportunity employer” in accordance with regulations adopted by the Commission on Human Rights and Opportunities;

(3) The Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) The Contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e, 46a-68f and 46a-86; and

(5) The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this section and section 46a-56.

(b) If the Contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency project.

(c) The Contractor shall include the provisions of subsections (a) and (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state, and in every subcontract entered into in order to fulfill any obligation of a municipal public works contract or contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer, unless exempted by regulations or orders of the Commission on Human Rights and Opportunities. The Contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with section 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission regarding a state contract, the Contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

**§ 7.3.2.7** Pursuant to the requirements of CGS §4a-60a:

(a)(1) The Contractor agrees and warrants that in the performance of the contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation;

(2) The Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) The Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56; and

(4) The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.

(b) The Contractor shall include the provisions of subsection (a) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state, and in every subcontract entered into in order to fulfill any obligation of a municipal public works contractor contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or

orders of the Commission on Human Rights and Opportunities. The Contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with section 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission regarding a state contract, the Contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

#### **§ 7.4 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service**

**§ 7.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights, except as may otherwise be set forth in the agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 7.5.2** The Contractor, Subcontractors, Sub-subcontractors and material and equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material and equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

#### **§ 7.6 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### **§ 7.7 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols associated therewith, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

#### **§ 7.8 Severability**

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

#### **§ 7.9 Notice**

**§ 7.9.1** Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic mail to the email addresses set forth herein for such designated representatives.

**§ 7.9.2** Notice of Claims and notice of termination shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### **§ 7.10 Relationship of the Parties**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## **ARTICLE 8 OWNER**

### **§ 8.1 Information and Services Required of the Owner**

**§ 8.1.1** (Intentionally omitted).

**§ 8.1.2** The Owner shall furnish all necessary surveys and information as required by the Contract Documents.

**§ 8.1.3** Intentionally Omitted.

**§ 8.1.4** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

### **§ 8.2 Owner's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **§ 8.3 Owner'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 a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect and deduct the reasonable cost thereof, including, without limitation, the Owner's expenses and compensation for the Architect's additional services made necessary thereby, from payment then or thereafter due Contractor.

### **§ 8.4 ADDITIONAL RIGHTS**

**§ 8.4.1** The rights stated in this Article 8 shall be in addition to and not in limitation of any other rights of the Owner provided in the Contract Documents, or as may be available to the Owner at law or in equity.

**§ 8.4.2** Any data provided by the Owner to the Contractor concerning the physical characteristics or measurements of the components that comprise the Project site; access to the Project site or staging and storing at the Project site; present obstructions and conditions of structures on or near the Project site; locations and depths of sewers, conduits, pipes, and gas lines on or near the Project site; positions of sidewalks, curbs and pavements on or near the Project site and other data concerning the conditions of the Project site and its surroundings, have been obtained from sources the Owner believes to be reliable. Accuracy of such data, however, is not guaranteed and is furnished solely for accommodation of the Contractor.

## **ARTICLE 9 CONTRACTOR**

### **§ 9.1 Review of Contract Documents and Field Conditions by Contractor**

**§ 9.1.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal



observations with requirements of the Contract Documents. The provisions of this Section 9.1.1 shall not be construed to limit the investigative and review responsibilities of the Contractor under any other provisions of the Contract Documents.

**§ 9.1.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. . If the Contractor performs any construction activity which it should have known constitutes an error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

**§ 9.1.2.1** The execution of the Contract shall constitute a representation that the Contractor has carefully reviewed the Contract Documents, and that the Contract Documents are sufficiently detailed and complete to permit the Contractor, (i) to complete the Project in an amount not in excess of the Contract Sum, except for additional costs incurred due to changes in the Work approved by the Owner; (ii) complete the Work within the Contract Time and in accordance with the Contract Documents and all applicable law which shall be inclusive of, without limitation, all statutes, ordinances, codes, rules and regulations and orders enacted, promulgated, issued or ordered by governmental body or public or quasi-public authority having jurisdiction over the Work, the Contractor, or the site of the Project. The Contractor is not required to ascertain that the Contract Documents are in accordance with all applicable law, but the Contractor shall promptly report to the Owner and the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 9.1.2.2** The execution of the Contract by the Contractor shall also constitute a certification by the Contractor that it has taken all steps necessary to ascertain the nature and location of the Work, and the general and reasonably observable conditions which can or may affect the Work and/or the cost thereof. Failure by the Contractor to fully acquaint itself with conditions which may affect the Work and/or the cost thereof, including, but not limited to, conditions relating to transportation, handling, storage of materials, availability of labor, water, other known projects in the region, applicable provisions of law, and the character and availability of equipment and facilities needed preliminary to and during the prosecution the Work, shall not relieve the Contractor of its responsibilities under the Contract Documents and shall not constitute a basis for extension of time or any increase in the Contract Sum. Owner assumes no responsibility for any representations concerning conditions made by any of its officers, or employees or representatives, prior to the execution of the Contract, unless such representations are expressly stated in the Contract Documents. The Contractor shall not perform any construction activity it knows constitutes a recognized error, inconsistency or omission. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without reporting the error, inconsistency or omission to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs of correction.

**§ 9.1.2.3** If the Contractor fails to fulfill its obligations to report to the Architect or Owner under this Article 9, the Contractor shall be precluded from asserting any Claim which arises from or relates to the circumstances that gave rise to the Contractor's obligation to make such report.

**§ 9.1.2.4** The Owner assumes no contractual liability or responsibility for the safety of the Project site or of any improvements thereon. Except as may be set forth in Section 16.2, the Contractor shall be solely responsible for providing safe conditions for the performance of the Work.

**§ 9.1.2.5** If any governmental body having jurisdiction over the Work requires licenses or registrations for the performance of the Work or any part thereof, the Contractor shall hold such valid licenses or registrations as may be required by law to prosecute the Work to completion. If any part of the Work for which such a license or registration is required is to be performed by Subcontractors or Sub-subcontractors, the Contractor shall ensure that

such Subcontractors or Sub-subcontractors hold such valid licenses or registrations as may be required by law to prosecute said Work to completion.

**§ 9.1.2.6** The Contractor shall send a qualified representative to periodic progress meetings held at such time and at such place as the Owner or Architect shall designate and to such other meetings as are necessary to comply with the Conditions.

**§ 9.1.3** The Owner assumes no contractual liability or responsibility for the physical condition or safety of the Project site or of any improvements thereon. As between the Contractor and the Owner, the Contractor shall be solely responsible for providing a safe place for the performance of the Work.

## **§ 9.2 Supervision and Construction Procedures**

**§ 9.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific express instructions concerning these matters.

**§ 9.2.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, Subcontractor's employees and their respective agents, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

## **§ 9.3 Labor and Materials**

**§ 9.3.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. To the extent applicable, the Contractor shall comply with Connecticut's prevailing wage laws.

**§ 9.3.1.1** All labor shall be performed by workmen skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents and the Contractor's Standard of Care will be achieved. A list of all supervisory personnel, including the project manager and superintendent that the Contractor intends to use on the Project and an organizational chart reflecting the chain of command among such personnel, shall be submitted to the Owner for approval. The Contractor shall not engage supervisory personnel or utilize an organizational chain of command other than as approved by Owner in writing and shall not change such personnel or form of organization without the prior written approval of the Owner.

**§ 9.3.1.2** To the extent required under Section 31-53 of the Connecticut General Statutes, the wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of Section 31-53 of the Connecticut General Statutes, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

**§ 9.3.1.3** To the extent required under Section 31-53b of the Connecticut General Statutes, the Contractor shall furnish proof, and shall cause its Subcontractors to furnish proof, with the weekly certified payroll form for the first week each employee begins work on the Project that any person performing the work of a mechanic, laborer or worker pursuant to the classifications of labor under section 31-53 on the Project, pursuant to the Contract, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 46 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268, and that any plumber or electrician subject to the continuing education requirements of section 20-334d, who has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health



Administration five or more years prior to the date such electrician or plumber begins work on the Project, has completed a supplemental refresher training course of at least four hours in duration in construction safety and health taught by a federal Occupational Safety and Health Administration authorized trainer.

**§ 9.3.1.3.1** To the extent consistent with any provision regarding residence requirements contained in a collective bargaining agreement to which the Contractor is a party, in the employment of labor to perform the work specified herein, preference shall be given to citizens of the United States, who are, and continuously for at least three months prior to the date hereof have been, residents of the labor market area, as established by the Labor Commissioner, in which such work is to be done, and if no such qualified person is available, then to citizens who have continuously resided in the county in which the work is to be performed for at least three months prior to the date hereof, and then to citizens of the state who have continuously resided in the state at least three months prior to the date hereof.

**§ 9.3.2** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**§ 9.3.3** The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

**§ 9.3.3.1** Approval by the Owner of any such substitution shall not relieve the Contractor requesting the substitution of responsibility for any additional costs incurred by other trades for changes made necessary to accommodate the substituted item.

**§ 9.3.3.2** By making requests for substitutions, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to substitution which subsequently become apparent; and
- .4 shall coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete in all respects.

**§ 9.3.4** Directions, specifications and recommendations by manufacturers for installation, handling, storing, adjustment, and operation of their materials or equipment shall be complied with, but the Contractor shall nonetheless have the responsibility for determining whether such directions, specifications, and recommendations may safely and suitably be employed in the Work, and for notifying the Architect in advance in writing of any deviation or modification necessary for installation safety or proper operation of the item.

**§ 9.3.5** Asphalt Material Escalation Adjustment (AMEA): The Contractor shall be entitled to an escalation adjustment to the cost of asphalt material for sidewalk paving performed after July 25, 2022. The AMEA will be based on the difference between the 7/25/2022 English Average Price for PG64-22 New Haven (Base EAP) posted on the Connecticut DOT Website and the current English Average Price for PG64-22 New Haven (Current EAP) as of the date asphalt paving is performed. The quantity of asphalt material delivered and installed (Quantity Installed) used in the calculation of the AMEA shall be verified by delivery tickets from the asphalt supplier.

**§ 9.3.5.1** The total amount of the AMEA shall be calculated as follows:  
Current EAP – Base EAP x Quantity Installed = AMEA

A Contract Change Order shall be issued to document and add the AMEA to the Contract Sum.  
The English Average Price for PG64-22 New Haven can be found at:  
<https://www.ct.gov/dot/cwp/view.asp?a=1410&q=399708>

## **§ 9.4 Warranty**

**§ 9.4.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The

Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

**§ 9.4.2** The Contractor warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. This warranty does not apply to those defects, inherent in the quality of the Work the Contract Documents require and that the Contractor reported. Substitutions not properly approved and authorized shall be considered to have failed to conform to the Contract Documents. Work, materials or equipment which fails to perform under the proper use and normal wear for intended purposes for a period of one year after the date of Substantial Completion, except where warranties for longer durations are called for by the Contract Documents, shall be considered defective. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 9.4.3** The warranties under this Section 9.4 shall be in addition to, and not a substitute for, any other rights of the Owner under the Contract Documents or existing in law or equity.

**§ 9.4.4** The warranties set forth in this Section 9.4 shall survive final payment and termination of this Agreement.

#### **§ 9.5 Taxes**

The Owner is a tax-exempt entity. The Contractor shall be familiar with the current regulations of the Connecticut Department of Revenue Services and the sales or use tax on materials or supplies exempted by such regulations shall not be included as part of the bid or the Contract Sum. A sales tax certificate will be provided by the Owner.

#### **§ 9.6 Permits, Fees, Notices, and Compliance with Laws**

**§ 9.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 9.6.2** The Contractor shall perform the Work in accordance with and comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work and those relating to equal opportunity, labor, wages and employment. If the Contractor performs Work knowing it to be contrary to any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### **§ 9.7 Allowances**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

#### **§ 9.8 Contractor's Construction Schedules**

**§ 9.8.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information and approval a construction schedule for the Work in accordance with the provisions of Attachment 1A, Section 2.5, Project Phasing and shall be revised at appropriate intervals as required by the conditions of the Work and Project, 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.

**§ 9.8.2** The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect and, as required, approved by the Owner.

**§ 9.8.3** The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The Contractor shall provide the Owner and the Architect with bi-weekly progress reports to reflect actual conditions ("Progress Reports") or at such other intervals as requested by the Owner. In the event any Progress Report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any Progress Report constitute an adjustment in the Contract Time or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

**§ 9.8.4** In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right, but not the obligation, to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime; (2) supplying additional manpower, equipment, and facilities; and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purposes of ensuring the Contractor's compliance with the approved construction schedule as adjusted for time extensions granted pursuant to Section 14.5. Except as provided herein, the Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner pursuant to this Section 9.8.4. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 9.8.4 as frequently as the Owner deems necessary to ensure that Contractor's performance of the Work will comply with the Substantial Completion Date, as the same may be extended by Change Order.

## **§ 9.9 Submittals**

**§ 9.9.1** The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

**§ 9.9.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

**§ 9.9.3** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

## **§ 9.10 Use of Site**

**§ 9.10.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 9.10.2** The Contractor shall be responsible for erecting and maintaining temporary fencing and other appropriate barriers as necessary to protect the construction site.

**§ 9.10.3** During the whole course of the Work, the Contractor shall conduct the Work so as to interfere with traffic near the site of the Work as little as possible and effect by every reasonable means the safety and comfort of pedestrians, vehicles and vehicle passengers near the site of the Work.

**§ 9.10.4** All employees or persons entering upon the property surrounding the Work site are restricted to the immediate area of Work. Only persons having official business will be admitted to the construction site.

### **§ 9.11 Cutting and Patching**

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

### **§ 9.12 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

### **§ 9.13 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 9.14 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 9.15 Indemnification**

**§ 9.15.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, State of Connecticut, Architect, Architect's consultants, and officials, officers, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees (including attorney's fees incurred in enforcing this Section 9.15.1), arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and only to the extent caused by the acts or omissions, breaches, errors or other improper unauthorized and/or unlawful acts of the Contractor, a Subcontractor, Sub-subcontractor anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, defects or breaches of warranty in, caused by, or related to the Work; or the Contractor's failure to comply with the provisions of the Contract Documents. The foregoing indemnity obligations shall not include liability for damage arising out of bodily injury to person or damage to property caused by or resulting from the negligence of the indemnitee, such indemnitee's agents or employees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1. The Contractor shall maintain, at the expense of the Contractor, appropriate insurance coverage to insure all of its responsibilities under this Section 9.15.1.

**§ 9.15.2** In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 10 ARCHITECT**

**§ 10.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, and until final payment is due, and from time to time during the one-year period described in Section 18.2. The Architect will have authority to act on behalf of the Owner only to the

extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 10.2 Intentionally Omitted.**

**§ 10.3** The Architect will visit the site at intervals appropriate to the stage of the construction, including regularly scheduled site meetings and visits, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 10.4** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner in writing (1) known deviations from the Contract Documents, (2) known deviations from the most recent approved construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 10.5** Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 10.6** The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

**§ 10.7** The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 10.8** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

**§ 10.9** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**ARTICLE 11 SUBCONTRACTORS**

**§ 11.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site and, unless otherwise expressly indicated, refers to subcontractors of all tiers performing any part of the Work (other than Subcontractors).

**§ 11.2** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made a reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor or supplier was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's or supplier's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.



§ 11.3 Contracts between the Contractor and Subcontractors shall (1) 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, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

## **ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

§ 12.1 The term "Separate Contractor(s)" shall mean any other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. If the Contractor claims that delay or additional cost is involved because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor, the Contractor shall make such claim as provided in Article 21.

## **ARTICLE 13 CHANGES IN THE WORK**

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

Any adjustments in the Contract Sum for such changes in the Work shall not include an amount of overhead and profit which exceeds the limitations set forth in §13.1.1 below.

§ 13.1.1 In the case of a change in the Work for which the Contractor is entitled to an adjustment in the Contract Sum under the terms and conditions of the Contract Documents, such adjustment shall be limited as follows:

(i) For that portion of the change in the Work that is self-performed by the Contractor, the Contractor's overhead and profit on such Work shall not exceed ten percent (10%) of the Contractor's direct costs incurred in the performance of such Work; and

(ii) For that portion of the change in the Work that is performed by Subcontractors, the Contractor's markup on such subcontracted Work shall not exceed five percent (5%) of the amount invoiced to the Contractor by the Subcontractors for that Work and a Subcontractor's overhead and profit on its portion of the change in the Work shall not exceed ten percent (10%) of the Subcontractor's direct costs incurred in the performance of such Work.

These limitations shall apply to both adds to and deductions from the Contract Sum.

Consistent with the adjustment limitations set forth in this Section 13.1.1 the Contractor shall include in each subcontract and/or supply agreement an aggregate limitation on the amount of profit and overhead the Subcontractor or Supplier and all lower tier Subcontractors and Suppliers can charge for Work performed pursuant to Change Orders and Construction Change Directives.

§ 13.1.2 In the case of a change in the Work for which the Owner would be entitled to a reduction in the Contract Sum under the terms and conditions of the Contract Documents, such reduction shall include an amount for reasonable overhead and profit.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, not to exceed the limitations set forth in §13.1.1 above, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.2.2 The Contractor shall provide evidence, reasonably satisfactory to the Owner, of any costs for which the Contractor seeks compensation or reimbursement pursuant to this Article 13.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or 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 Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall, prior to proceeding to implement such change in the Work, notify the Architect and, unless otherwise instructed by the Architect shall proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

## ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date Substantial Completion of the Work is achieved as provided in Section 15.6.1.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes which the Architect determines, justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

## ARTICLE 15 PAYMENTS AND COMPLETION

### § 15.1 Schedule of Values

§ 15.1.1 the Contractor shall submit a draft Application for Payment to the Architect before the first Application for Payment. The Application for Payment's schedule of values shall be based on the Contractor's Bid Form Submission attached hereto as Attachment 2. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

The Bid Form submitted with the Bid attached hereto as Attachment 2b shall be the basis of the Schedule of Values.

### § 15.1.2 Intentionally Omitted



## § 15.2 Intentionally Omitted

### § 15.3 Applications for Payment

§ 15.3.1 The Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by, the data to substantiate its accuracy as may be required by the Architect. This schedule of values, upon approval thereof by the Owner and the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The final version of the Application for Payment shall be notarized, if required; be supported by all Supporting Documentation substantiating the Contractor's right to payment that the Owner or Architect require; and shall reflect retainage if provided for in the Contract Documents. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

### § 15.3.2 Intentionally Omitted

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.5 Applications for Payment, and invoices in support of the same, shall clearly distinguish between amounts charged for labor and amounts charged for materials.

§ 15.3.6 Unless otherwise required by the Owner, Applications for Payment shall be on AIA documents G702 and G703.

§ 15.3.7 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests. The Contractor further expressly undertakes to defend the Owner, at the Contractor's sole cost and expense, against any actions, lawsuits, or proceedings brought against Owner as a result of claims made or liens filed against the Work, the Project site and any improvements thereon (referred to collectively as "Liens" in this Section 15.3.7), by the Contractor, any Subcontractor, Sub-subcontractor or anyone claiming by, through or under them. The Contractor shall indemnify, defend and hold Owner harmless against any such claims, Liens and claims of Liens and agrees to pay any judgment or Lien resulting from any such actions, lawsuits or proceedings. The Contractor's obligations under this Section 15.3.7 are conditioned upon Owner having fulfilled its payment obligations to the Contractor with respect to the Work that is the subject of the claim, Lien or claim of Lien and for which indemnification is sought.

### § 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 15.4.3** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 15.4.4** The Owner shall not be deemed to be in default by reason of withholding payment while any of the grounds described in Section 15.4.3 remain uncured nor shall any interest accrue or be payable with respect to any payments so withheld.

#### **§ 15.5 Progress Payments**

**§ 15.5.1** The Contractor shall pay each Subcontractor as required under Section 4.1.3.

**§ 15.5.2** Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

**§ 15.5.3** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

#### **§ 15.6 Substantial Completion**

**§ 15.6.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Substantial Completion shall not be deemed achieved until the Owner's receipt of certification by the Architect that the Work is Substantially Complete in the form of a Certificate of Substantial Completion.

**§ 15.6.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 15.6.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. 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.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

### § 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed including, without limitation, the completion of all "punch list" items to the satisfaction of the Architect and Owner, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete set of releases and waivers of claims/mechanics liens arising out of this Contract subject only to receipt of final payment which reflect that the Contractor has met all of its prior obligations to make payments to others hereunder. If any such claims/liens remain unsatisfied after final payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claims/liens, including costs and reasonable attorneys' fees.

### § 15.7.3 Intentionally Omitted

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

### § 15.7.5 ACCESS TO BOOKS AND RECORDS AND AUDITS

Upon forty-eight (48) hours prior notice to the Contractor, the Owner shall have the right to inspect and copy the books and records of the Contractor to verify Work performed, payments made or unpaid, amounts claimed, obligations owed and any other documentation related to the Project or this Contract. The Contractor shall comply, and shall cause Subcontractors and Sub-subcontractors to comply, with all accounting procedures and record retention policies reasonably requested by the Owner. The Contractor shall retain its records for seven (7) years after Final Completion of the Work is achieved unless otherwise agreed by the Owner. Upon request of the Owner, the Contractor will cooperate, and secure the cooperation of all Subcontractors and assist the Owner during any audit of the Project conducted by the Owner at any time after Substantial Completion. Such cooperation shall include providing the Owner with access to all records related to the Project.

## ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

### § 16.1 Safety Precautions and Programs

§ 16.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- 1 employees on the Work and other persons who may be affected thereby;
- 2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall, at the Contractor's sole cost and expense, promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3 except to the extent such damage

or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are separate from, in addition to, and not to be considered a part of the Contractor's obligations under Section 9.15. § 16.1.2 In the event the Contractor identifies activities or conditions during performance of the Work or at the Project, which, in the Contractor's good faith opinion, pose an unreasonable risk of bodily injury or property damage, whether immediate or in the future, the Contractor shall have the right to immediately take steps to protect its personnel and Subcontractors and stop Work and remove its personnel from the affected area.

§ 16.1.3 The Contractor shall at all times provide protection against weather (rain, wind, storms or heat) so as to maintain all Work, materials, apparatus and fixtures free from damage. At the end of the day's work, all new Work likely to be damaged shall be reasonably protected against such weather.

§ 16.1.4 The Contractor shall provide adequate fire protection for all operations associated with the Work, and such protection must meet all applicable federal (including OSHA), State and municipal regulations.

§ 16.1.5 The Contractor shall remove and replace with new work, at the Contractor's own expense, any Work damaged by failure to provide protection pursuant to Sections 16.1.3 and 16.1.4.

§ 16.1.6 The Contractor shall be responsible, to the extent not covered by insurance, for damage, loss or liability due to theft or vandalism to the Work and stored materials when work is not in progress, at night, on weekends or holidays.

§ 16.1.7 The Contractor shall protect and prevent damage to all unfinished phases of the Work.

#### § 16.1.8 SECURING THE SITE

The Contractor is responsible for securing, and preventing access by unauthorized individuals to, the Project site from such date as the Contractor, Subcontractors, Sub-subcontractors, consultants, or agents commence the Work until the date of Final Completion, unless the Owner and Contractor agree in writing to an earlier date.

#### § 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, whether naturally occurring or manmade, that is hazardous, toxic, or words of similar import or regulatory effect, and any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls (collectively, "Hazardous Materials"). If the Contractor believes its Work will disturb or otherwise implicate any actual or suspected Hazardous Material or encounters a Hazardous Material not addressed in the Contract Documents, the Contractor shall not disturb any such Hazardous Material, immediately report the condition to the Owner and the Architect in writing and take all necessary precautions to prevent release of and exposure to the Hazardous Materials and foreseeable bodily injury or death to persons resulting from such Hazardous Material. If such reasonable precautions will be inadequate to prevent release of and exposure to Hazardous Materials, or foreseeable bodily injury and death, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area. When the Hazardous Material has been rendered harmless and/or otherwise abated in accordance with all applicable law, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up except to the extent that the Hazardous Material was first encountered due to the negligence, willful or intentional misconduct, or breach of contract by the Contractor, Subcontractor, Sub-subcontractor or any person or entity for whom or which any of them is responsible.

§ 16.2.2 In no event shall the Owner have any responsibility for any substance or material (including, but not limited to, any Hazardous Material) that is brought to the Project site by the Contractor, any Subcontractor or any materialman or supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are Hazardous Materials or comprised of any items that are Hazardous Materials.

§ 16.2.3 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, its agents and employees against claims, damages, losses and expenses, including but not limited to attorney's fees,

resulting from any Hazardous Materials or substance which the Contractor brings to the site and improperly handles or from the Contractor's failure to perform its obligations under Section 16.2.1, provided that such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property or violation of a applicable law and except to the extent that such damage, loss or expense was caused by or results from the negligence of the indemnitee.

**§ 16.2.4** The Contractor shall perform all required procedures necessary to ensure that there will be no actual or threatened release, discharge, spillage, uncontrolled loss, seepage or filtration (each a "Release") of any Hazardous Materials on the site caused by its operations. The Contractor is responsible for any and all costs and liabilities associated with the investigation and remediation of any such Release, or as required by regulating authorities having jurisdiction under applicable law, and holds the Owner, its employees and agents, and the fee owner of the Project site (if other than the Owner), harmless against any current or future liabilities resulting from such incidents.

**§ 16.2.5** All material and equipment furnished under the Contract Documents shall be free of asbestos, lead based paint, and PCBs. Unless otherwise specified in the Contract Documents, any material or equipment containing these, and any other Hazardous Materials shall be considered defective and shall be removed by the Contractor at the Contractor's sole expense.

## **ARTICLE 17 INSURANCE AND BONDS**

### **§ 17.1 Contractor's Insurance**

**§ 17.1.1** The Contractor shall purchase from, and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.15. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

### **§ 17.1.2**

The insurance required by Section 17.1.1 hereof shall include the policies listed in this Section 17.1.2 and shall be written for not less than the amounts specified in this Section 17.1.2, Schedule B, Section 8, or greater if required by law.

- .1 Workers' Compensation (waiver of subrogation required):
  - a. State
  - b. Voluntary Compensation (by any exempt entities):  
Same as State Workers' Compensation
  - c. Employers Liability:  
\$500,000 Each Accident  
\$500,000 Disease, Policy Limit  
\$500,000 Disease, Each Employee
- .2 Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):
  - a. Bodily Injury  
\$1,000,000 Each Occurrence  
\$2,000,000 Per Location/Per Site General Aggregate
  - b. Property Damage:  
Included Each Occurrence  
Included Aggregate
  - c. Products and Completed Operations
  - d. Property Damage Liability Insurance shall provide explosion, collapse and underground coverage as applicable
  - e. Contractual Liability:



- Bodily Injury:  
\$1,000,000 Each Occurrence
- Property Damage:  
Included Each Occurrence  
Included Aggregate
- f. Personal Injury with Employment Exclusion deleted:  
\$1,000,000 Aggregate
- g. If the General Liability policy includes a General Aggregate, such Aggregate shall not be less than \$2,000,000. Policy shall be endorsed to have General aggregate apply to this Project only.
- .3 Umbrella Excess Liability  
\$10,000,000 Over primary insurance  
\$10,000 Retention
- .4 Comprehensive Automobile Liability (owned, non - owned, hired):
  - a. Bodily Injury:  
\$1,000,000 Per Accident
  - b. Property Damage:  
Included Each Occurrence
- .5 Contractor's Pollution Liability
  - a. \$2,000,000 Each Occurrence

**§ 17.1.3** The Contractor shall require its Subcontractors and Sub-subcontractors to maintain the same types of insurance the Contractor is required to maintain under the Contract Documents in coverage amounts approved by the Owner.

§ Sections 17.1.4 – 17.1.9 intentionally Omitted

**§ 17.1.10** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1.

**§ 17.1.11** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ 17.1.12** The Contractor shall cause the commercial liability coverage, the comprehensive automobile coverage and the umbrella/excess coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants, the Town of East Hartford, and The State of Connecticut as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner, Town of East Hartford and the State of Connecticut as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

**§ 17.1.13** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1; the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The

furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 17.1.14 Other Insurance Provided by the Contractor**

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

Coverage	Limits
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**§ 17.2 Owner's Insurance**

**§ 17.2.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**§ 17.2.2 Property Insurance**

**§ 17.2.2.1 Intentionally Omitted**

**§ 17.2.2.2** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

**§ 17.2.2.3** If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§** (Sections 17.2.2.4 – 17.2.2.8 intentionally deleted)

**§ 17.2.3 Other Insurance Provided by the Owner**

*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage	Limits
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**§ 17.3 Performance Bond and Payment Bond**

**§ 17.3.1** The Contractor shall furnish to the Owner (i) a labor and material payment bond equal to one hundred percent (100%) of the Contract Sum and otherwise in accordance with the requirements of Connecticut law; and (ii) a bond covering the Contractor's faithful performance of all of its obligations under the Contract Documents, in each case such bonds will be issued by a surety satisfactory to the Owner and shall reflect the Owner as the obligee. The Contractor shall deliver the executed, approved bonds to the Owner no later than three (3) business days after execution of this Contract unless otherwise required by the Owner. Such bonds shall comply with the requirements of Connecticut General Statutes §49-41. In the event that the surety assumes the contract or obtains a bid or bids for completion of the contract, the surety shall ensure that the contractor chosen to complete the contract is prequalified pursuant to section 4a-100 of the Connecticut general statutes in the requisite classification and has the aggregate work capacity rating and single project limit necessary to complete the contract.

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**§ 17.3.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**ARTICLE 18 CORRECTION OF WORK**

**§ 18.1** The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of



uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 18.2** In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition.

**§ 18.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

**§ 18.4** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 18.5** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

## **ARTICLE 19 MISCELLANEOUS PROVISIONS**

### **§ 19.1 Assignment of Contract**

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 19.2 Governing Law**

The Contract shall be governed by the law of the State of Connecticut.

### **§ 19.3 Tests and Inspections**

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall pay for tests, inspections, or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor. If the inspections and tests conducted under this Section 19.3 reveal failure in a portion of the Work, the Owner may order the inspection and testing, at the Contractor's expense, of any and all portions of the Work that are identical or similar to the failing portion.

**§ 19.4** The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement and the final completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it, through its Subcontractors or otherwise, is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder in a timely manner and has sufficient experience and competence to do so;
- .3 the Contractor is authorized to do business in the State of Connecticut and is properly licensed by all necessary governmental authorities having jurisdiction over the Contractor and the Project; and

- .4 the Contractor has visited the site of the Project and become familiar with the Contract Documents and the visible conditions of the site and knows of no reason why the Work cannot be performed as set forth in the Contract Documents.

**§ 19.5** The Owner's representative:

*(Name, address, email address and other information)*

« Anthony L. Lazzaro Jr., Esq. »  
« Deputy Director & General Counsel »  
« Capital Region Development Authority »  
« 100 Columbus Boulevard, Suite 500 »  
« Hartford, CT 06103 »  
« Phone: (860) 527-0100 »  
« Email: alazzaro@crdact.net »

**§ 19.6** The Contractor's representative:

*(Name, address, email address and other information)*

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« »  
« »  
« Email: »

**§ 19.7** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 19.8** The Contractor shall be solely responsible for assuring that the procurement and award of Subcontracts for the Work are conducted in a manner consistent with Applicable Laws and the Contract Documents. Such responsibilities shall include, without limitation, compliance with the requirements of Connecticut General Statutes Sections 4b-91, , 4a-100, 4a-60, et seq.; 4a-60a and 46a-68c, as applicable.

**§ 19.9** This contract is subject to state set-aside and contract compliance requirements. The Contractor must comply with Connecticut General Statutes §§ 4a-60, 4a-60a, 4a-60g, and 46a-68b through 46a-68f, inclusive, as amended by June 2015 Special Session Public Act 15-5. An Affirmative Action Plan must be filed with and approved by the Commission on Human Rights and Opportunities prior to the commencement of construction. The Contractor shall be required to make good faith efforts to place a minimum of twenty-five (25%) percent of the subcontracts awarded by the Construction Manager with eligible contractors holding current certification from the Connecticut Department of Administrative Services ("DAS") under the provisions of Connecticut General Statutes § 4a-60g, as amended (25% of the work with DAS-certified Small and Minority owned business(s) and 25% of that work with DAS-certified Minority, Women and/or Disabled owned businesses).

**§ 19.10 Out of State Contractors and Subcontractors**

If the Contractor is an "unverified contractor," as each such term as defined in Section 12-430(7)(A) of the Connecticut General Statutes, as revised, the Contractor shall comply fully with the provisions of Section 12-430(7)(C) and, prior to commencing the Work, shall furnish the Owner with a copy of the requisite certificate of compliance set forth in subparagraph (B) of Section 12-430(7).

**§ 19.11** If any provision of this Agreement or any other contracts among the Contract Documents is found to be invalid or illegal by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect

and the parties agree to substitute for the invalid provision the provision within the bounds of the law which most clearly effectuates the legal and economic intent of the invalid provision. »

**§ 19.12 Execution in Counterparts.** This Agreement may be signed in two or more counterparts, each of which shall be treated as an original but which, when taken together, shall constitute one and the same instrument. Signed copies of this Agreement may be faxed and e-mailed with the same force and effect as if the originally executed Agreement had been delivered.

## **ARTICLE 20 TERMINATION OF THE CONTRACT**

### **§ 20.1 Termination by the Contractor**

If the Architect repeatedly fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner repeatedly fails to make payment as provided in Section 4.1.3 for a period of 30 days beyond the date such payment is due to be made, the Contractor may, upon ten (10) additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment in accordance with the Contract Documents for Work executed, in accordance with the Contract Documents, and direct costs incurred by reason of such termination. The notice of termination must state with specificity the means by which the Owner may cure its nonperformance, and the Contractor shall not terminate this Agreement if, within the applicable ten (10) day period, the Owner substantially takes such curative measures.

### **§ 20.2 Termination by the Owner for Cause**

#### **§ 20.2.1** The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws inclusive of, without limitation, all statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 institutes proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or similar or applicable federal or state law, or a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or the Contractor admits in writing its inability to pay its debts as they become due, or it makes a general assignment for the benefit of its creditors, or a receiver, liquidator, trustee, or assignee is appointed, or a receiver of all or any substantial portion of the Contractor's properties is appointed;
- .6 abandons the Work;
- .7 submits an Application for Payment, sworn statement, release and waiver of liens/claims, affidavit or document of any nature whatsoever which is intentionally falsified; or
- .8 fails to make prompt payment to Subcontractors or for materials or labor in accordance with the respective subcontracts and the Contract Documents or otherwise breaches its obligations under any subcontract with a Subcontractor.

**§ 20.2.2** When any of the reasons described in Section 20.2.1 exists, the Owner, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 20.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 20.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be retained by the Owner. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

### **§ 20.3 Termination by the Owner for Convenience**

The Owner may, at any time, without prejudice and without waiving any other right or remedy the Owner may have, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment in accordance with the Contract Documents for Work executed in accordance with the Contract Documents and direct costs incurred by reason of such termination.

### **§ 20.4 PAYMENT UPON TERMINATION**

**§ 20.4.1** Except for claims for such payments as the Owner is explicitly required to make upon termination pursuant to this Article 20, the Contractor hereby waives and forfeits all claims for payment and damages, including without limitation, anticipated profits.

**§ 20.4.2** When making any payment upon termination required under this Article 20, the Owner shall be credited for (1) payment previously made to the Contractor for the terminated portion of the Work; (2) valid claims which the Owner has against the Contractor under the Contract Documents; and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that were included in the Contract Sum.

## **ARTICLE 21 CLAIMS AND DISPUTES**

**§ 21.1** Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

Notwithstanding anything to the contrary in the Contract Documents, neither the Contract Sum nor the Contract Time shall be adjusted if the increased costs or delay underlying the Contractor's claim for adjustment stems from the negligent act or omission of the Contractor, Subcontractors, Sub-subcontractors, or of anyone for whose performance the Contractor is responsible to the Owner, or as a result of the error of any of the same or of the failure of any of the same to comply with, and fulfill their responsibilities under, the Contract Documents.

### **§ 21.2 Notice of Claims**

**§ 21.2.1** Claims by the Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

**§ 21.2.2** Claims by the Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Owner.

### **§ 21.3 Time Limits on Claims**

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law.

### **§ 21.4 Intentionally Omitted.**

**§ 21.5** The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 Intentionally Omitted.

§ 21.7 Intentionally Omitted

§ 21.8 Intentionally Omitted

§ 21.9 Intentionally Omitted.

**§ 21.10 Continuing Contract Performance**

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 21.11 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

« Anthony L. Lazzaro Jr., Esq. »  
« Deputy Director & General Counsel »

*(Printed name and title)*

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**CONTRACTOR** *(Signature)*

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*(Printed name and title)*