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## AIA Document A107™ – 2007

### *Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope*

AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and

BETWEEN the Owner:

Town of Stratford

and the Contractor:

for the following Project:

The Architect:  
*(Paragraph deleted)*

#### **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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The Owner and Contractor agree as follows.

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## ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Work shall include, without limitation, the Work described in (i) that certain document entitled " \_\_\_\_\_ ", a copy of which document is attached hereto as Exhibit A and made a part hereof ("RFP"); and (ii) that certain documents submitted by the Contractor to the Owner in response to the RFP, a copy of which document submitted by the Contractor is attached hereto as Exhibit B and made a part hereof (the "Proposal"). In the event of any conflicting provisions between the RFP, Article 23 of this Agreement and the Proposal, such provisions shall be construed according to the following priorities: highest priority, RFP; second priority, this Agreement; and last priority, the Proposal. The term Commissioning Services as used herein shall mean the Work described in the Contract Documents; and the term Additional Services as used herein shall mean each service identified as an Additional Service in Article 23 of this Agreement unless such service is already included in the scope of the Work under the RFP and Proposal.

## ARTICLE 2 DATE OF COMMENCEMENT AND FINAL COMPLETION

§ 2.1 The date of commencement of the Work shall be  
(Paragraphs deleted)

as set forth in a written notice from the Owner to the Contractor (the "Notice to Proceed") that directs the Contractor to commence such Work (the "Date of Commencement").

§ 2.2 The The Contract Time, as set forth in Section 2.3 below, shall be measured from the Date of Commencement.

§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work  
(Paragraphs deleted)

in accordance with the schedule of commissioning services prepared by the Contractor in accordance with the RFP and approved by the

(Table deleted)

Owner (the "Completion Date"), subject to adjustments of this Contract Time as provided in the Contract Documents.

(Paragraph deleted)

The Owner and Contractor hereby acknowledge and agree that time is of the essence with respect to Contractor's performance of the Work hereunder. On the Date of Commencement Contractor shall immediately commence performance of the Work and continue to perform the same during the term of this Agreement in accordance with the commissioning services schedule set forth in Section 2.3. Owner and Contractor recognize the difficulties involved in proving actual damages and losses suffered by Owner if the Work is not completed and ready for Owner's acceptance by the Completion Date. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for any such delay in completion or readiness for acceptance (but not as a penalty) Contractor shall pay Owner One Thousand and 00/100 Dollars (\$1,000.00) for each calendar day beyond the Completion Date that Contractor fails to complete all of the Work and have the same ready for Owner's acceptance until all such Work is completed by Contractor and readied by Contractor for acceptance by Owner.

## 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

(Paragraphs deleted)

a Stipulated Sum, in accordance with Section 3.2

(Paragraphs deleted)

below.

§ 3.2 The Stipulated Sum shall be \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_ .00), in accordance with the Contractor's Building Commissioning Services Fee Proposal Detail dated \_\_\_\_\_, a copy of which commissioning services fee proposal detail is attached hereto as Exhibit C and made a part hereof ("Fee Proposal"), subject to additions and deletions 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:

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*(Paragraphs deleted)*

None.

## § 3.2.2 Unit

*(Paragraphs deleted)*

prices are set forth on the Fee Proposal.

*(Table deleted)*

## § 3.2.3 Allowances included in the

*(Paragraphs deleted)*

Stipulated Sum, if any: None.

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

## ARTICLE 4 PAYMENTS

### § 4.1 PAYMENTS

§ 4.1.1 Payments for Commissioning Services shall be made monthly in proportion to the Commissioning Services performed as set forth on the Fee Proposal and shall be based upon the Contractor's invoices submitted to the Owner.

§ 4.1.2 The period covered by each invoice shall be one calendar month ending on the last day of the month.

§ 4.1.3 Provided that an invoice is received by the Owner not later than the first day of a month, the Owner shall make payment of the invoiced amount to the Contractor not later than the last day of the same month. If an invoice is received by the Owner after the date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the invoice.

§ 4.1.4 Retainage, shall be withheld as follows: five percent (5%) from Contractor's monthly payment.

§ 4.1.5 Payments due and unpaid under the Contract shall bear no interest from the date payment is due.

§ 4.1.6 Contractor shall be entitled to requisition for and be paid all retainage, exclusive of one hundred fifty percent (150%) of the reasonable estimates of the costs to complete any remaining work that is included on a punchlist mutually developed by Owner and Contractor. The punchlist shall be developed prior to Contractor's submission of a final invoice. As items on the punchlist are completed, Contractor shall be paid the cost of the completed items of work upon requisition by Contractor. Any disputed amounts shall be set forth in writing by Owner to Contractor and supported by appropriate references to the Contract Documents.

§ 4.1.7 A 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.

### § 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 the Contractor has fully performed the

*(Paragraphs deleted)*

Contract.

*(Paragraphs deleted)*

## ARTICLE 5 DISPUTE RESOLUTION

### § 5.1 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by, mediation pursuant to Section 21.11, the method of binding dispute resolution shall be

*(Paragraphs deleted)*

litigation in a court of competent jurisdiction.

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## 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 A107–2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope, as amended.

§ 6.1.2 The Supplementary and other Conditions of the Contract, if any, are set forth in the RFP.

*(Table deleted)*

§ 6.1.3 The

*(Paragraphs deleted)*

Specifications are set forth in the RFP.

*(Table deleted)*

§ 6.1.4

*(Paragraphs deleted)*

There are no drawings.

*(Table deleted)*

§ 6.1.5

*(Paragraphs deleted)*

There are no addenda.

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

Exhibit A – Request for Proposal;

Exhibit B – Proposal; and

*(Paragraphs deleted)*

Exhibit C – Fee Proposal.

## 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 Owner. 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.

### § 7.2 THE CONTRACT

The Contract Documents form the Contract for Commissioning Services. 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 AND COMMISSIONING SERVICES

The terms "Work" and "Commissioning Services" shall mean the commissioning services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.

*(Paragraphs deleted)*

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## ARTICLE 8 OWNER

### § 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 8.1.1 The Owner shall identify the systems to be commissioned and furnish a program setting forth the Owner's objectives, schedule, constraints and criteria, system requirements and relationships, special equipment and site requirements.

§ 8.1.2 The Owner shall provide to the Contractor data necessary for the Commissioning Services which may include design drawings, construction documents, record drawings, shop drawings and submittals, operation and maintenance manuals, master plans, operation costs, operation budgets, and pertinent records relative to historical building data, building equipment, furnishings and repairs.

§ 8.1.3 The Owner shall provide access to the property, buildings, and personnel necessary for the Contractor to provide the Commissioning Services. The personnel shall conduct tours and walk-throughs and explain the facility's original, current and anticipated future use.

*(Paragraphs deleted)*

§ 8.1.4 The Owner may furnish the services of design consultants, testing agencies, and contractors necessary to allow the Contractor to provide the Commissioning Services.

§ 8.1.5 To the extent information is furnished or made available by the Owner to the Contractor, such information is furnished solely for the convenience of Contractor only and shall not relieve Contractor from its duties under the Contract Documents.

## ARTICLE 9 CONTRACTOR

### § 9.1 INDEMNIFICATION

§ 9.1.1 Contractor hereby agrees to and shall at all times defend, indemnify and hold harmless the Owner and its subsidiaries, affiliates, officers, agents and employees (collectively "Indemnitees") from any and all losses, costs, expenses (including court costs and attorneys' fees, interest and profits), claims, demands, suits by any person or persons, injuries, damages or death and other liabilities of whatsoever kind or nature arising out of or resulting from the performance (or attempted performance) of the Work, or otherwise caused by, incident to, connected with or arising directly or indirectly out of: (a) the performance of the Contract by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable or (b) any act, omission, or negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnity shall survive the termination of this Contract

§ 9.1.2 Contractor's indemnification obligation covers all acts arising out of but not limited to the following:

- .1 Bodily injury, sickness, disease or death, or to injury to or destruction of property including the loss of use resulting therefrom,
  - .a caused by, incident to, connected with, or arising directly or indirectly out of the performance of the Contract Documents;
  - .b arising directly or indirectly out of the presence of any person in, on, or about any part of the Project site or the streets, sidewalks and property adjacent thereto; or
  - .c arising directly or indirectly out of the use, misuse, or failure of any machinery or equipment (including but not limited to, scaffolding, ladders, hoists, rigging, supports, etc.) whether or not such machinery or equipment was furnished, rented, or loaned by the Owner, its officers, employees, agents or servants, or others;
- .2 Failure of Contractor in any way to comply with the requirements of the Fair Labor Standards Act, as amended, and all other applicable Federal, State or local statutes, laws, ordinances, rules, regulations (including, but not limited to, the Occupational Safety and Health Act of 1970) or orders or any term or provision of the Contract Documents (with all of which all Subcontractors agree to fully comply).

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§ 9.1.3 In claims against any Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Agreement 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.

If Contractor fails to defend any person indemnified hereunder, such person may defend any suit, action or other legal proceeding and the actual and reasonable costs thereof (including, without limitation, actual and reasonable attorneys' fees) shall be included as part of the loss, cost, damage and expense covered by Contractor's indemnity.

## § 9.2 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

In performing the Work the Contractor (i) shall comply with applicable laws, rules, regulations, ordinances, codes, orders and permits of any and all federal, state and local governmental and quasi-governmental bodies, agencies, authorities and courts having jurisdiction regarding affirmative action and equal employment opportunity; and (ii) shall not discriminate in employment or in the provision of equal housing opportunities to any person in any manner prohibited by the applicable provisions of federal and state law and regulation as presently in full force and effect, as may be amended.

*(Paragraphs deleted)*

## § 9.3 PERFORMANCE OF THE WORK

The Work shall be performed by Contractor in a timely and good workmanlike manner and in accordance with: (i) sound practices of, and pursuant to a standard of care exercised by, commissioning service providers performing similar services under like circumstances; (ii) any and all instructions, guidance and directions provided by Owner to Contractor; (iii) this Agreement and the Contract Documents; and (iv) any and all applicable laws, rules, regulations, ordinances, codes, orders and permits of any and all federal, state and local governmental and quasi-governmental bodies, agencies, authorities and courts having jurisdiction.

*(Paragraphs deleted)*

## ARTICLE 10 SECTION OMITTED

*(Paragraphs deleted)*

## 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.

§ 11.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of the Subcontractors or suppliers for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor 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 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 (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.

*(Paragraphs deleted)*

## § 11.4 SUBCONTRACTUAL RELATIONS

§ 11.4.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms

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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. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 11.4.2 Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following provisions:**

- .1 An agreement that the Owner is a third-party beneficiary of the Sub-contract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, express or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement;
- .2 A provision that the agreement shall be terminable upon seven (7) days' written notice by the Contractor (or Subcontractor) or, if the Subcontract (or Sub-subcontract) has been assigned to Owner, by Owner;
- .3 A provision that neither the Contractor nor the Subcontractor (or Sub-subcontractor) shall have the right to require arbitrations of any disputes; and
- .4 A provision requiring the Subcontractor (or Sub-subcontractor) to submit certificates and waivers of liens for work completed by it and its Sub-subcontractors as a condition precedent to the disbursement of the progress payment next due and owing.
- .5 Subcontractor (or Sub-subcontractor) hereby agrees that it shall have no claim for damages of any kind on account of any delay in commencement of the Work and/or any delay or suspension of any portion of the Work, whether such delay is caused by the Contractor, the Owner or otherwise. Subcontractor (or Sub-subcontractor) acknowledges that its sole remedy for any such delay and/or suspension will be an extension of time as may be expressly provided herein.
- .6 Subcontractor acknowledges that delays resulting from changes in the work, extreme weather, changes to the sequencing of the work, material shortages, transportation, strikes and other causes are inherent in the construction process. Subcontractor acknowledges that it has accounted for delays in its prices and agrees to bring no claims for money damages as a result of any delay or hindrance. In the event that Subcontractor claims that it has been delayed or hindered, it shall submit a request for a time extension to Contractor in the manner and pursuant to the time periods set forth in the Contract Documents. If it is determined that Subcontractor has been delayed or hindered through no fault of its own, the time for performance hereunder will be extended and the extension of time will be Subcontractor's sole remedy for the delay. Under no circumstances will the Contractor or Owner be liable to the Subcontractor for damages resulting from any delays or hindrances.
- .7 A provision requiring the Subcontractor (or Sub-subcontractor) to comply with applicable laws, rules, regulations, ordinances, codes, orders and permits of any and all federal, state and local governmental and quasi-governmental bodies, agencies, authorities and courts having jurisdiction, including, but not limited to, affirmative action and equal employment opportunity laws.

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- .8 A provision that the Subcontractor (or Sub-subcontractor) shall not discriminate in employment or in the provision of equal housing opportunities to any person in any manner prohibited by the applicable provisions of federal and state law and regulation as presently in full force and effect, as may be amended.

§11.4.3 The Contractor shall be responsible for any and all Subcontractors working under it and shall carry insurance for all Subcontractors or ensure that they are carrying it themselves so as to relieve the Contractor and Owner and their respective officers, directors, agents, and employees of any and all liability arising out of the respective subcontractor's work.

§ 11.4.4 The Owner assumes no responsibility for the overlapping or omission of parts of the Work by various Subcontractors in their agreements with the Contractor, because this is solely the Contractor's responsibility.

## § 11.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 11.5.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner pursuant to Sections 20.2 or 20.3 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 11.5.2 The Contractor shall, upon the request of Owner, submit a copy of each subcontract signed by Contractor in connection with the Project. Each subcontract shall contain a contingent assignment of the subcontract to the Owner consistent with Sections 11.4 and 11.5.

## ARTICLE 12 SECTION OMITTED

## 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 and Contractor, or by written Construction Change Directive signed by the Owner.

§ 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, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, 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 Owner 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 Owner will prepare a Change Order.

§ 13.3 The Owner may 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 Contractor. The Contractor shall carry out such written orders promptly.

*(Paragraph deleted)*

## ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the 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 final completion of the Work.

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

§ 14.4 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, 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 by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine, subject to the provisions of Article 21.

*(Paragraphs deleted)*

## ARTICLE 15 PAYMENTS AND COMPLETION

### § 15.1 FINAL COMPLETION AND FINAL PAYMENT

§ 15.1.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of Contractor's final invoice, the Owner will make such inspection.

§ 15.1.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.1.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 15.1.4 Acceptance of final payment by the Contractor, a Subcontractor or material 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 final invoice.

*(Paragraphs deleted)*

## ARTICLE 16 ARTICLE OMITTED

## ARTICLE 17 INSURANCE

§ 17.1 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 listed below in this Article 17, including, but not limited to, 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 9.1. 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.

§ 17.1.1 Workers compensation and employers' liability insurance meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows: \$1,000,000 for each accident, \$1,000,000 for each disease/policy limit and \$1,000,000 for disease for each employee.

§ 17.1.2 Commercial general liability insurance including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards);  
\$1,000,000 Each Occurrence

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\$3,000,000 General Aggregate  
\$2,000,000 Personal and Advertising Injury  
\$2,000,000 Products-Completed Operations Aggregate

- .1 The policy shall be endorsed to have a minimum of \$2,000,000.00 of the General Aggregate apply to this Project only. Owner shall be included as an additional insured.
- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least two (2) years after final payment.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 9.1 of this Agreement.

§ 17.1.3 Automobile liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage:  
\$1,000,000 Each Accident  
\$2,000,000 Aggregate

§ 17.1.4 Contractor's property and equipment insurance covering all property and equipment to be used in connection with the Work hereunder in an amount equal to one hundred (100%) percent of actual cash value.

§ 17.1.5 In the event performance of the Work requires the abatement of hazardous materials, environmental liability insurance with a minimum combined single limit coverage, including coverage for automobiles and general liability, of not less than five million (\$5,000,000.00) dollars, including sudden and accidental exposures for all Contractor's operations hereunder.

§ 17.1.6 Prior to commencement of the Work, Contractor shall submit to Owner a certificate or certificates for each required insurance referenced in this Article 17 certifying that such insurance is in full force and effect and setting forth the information required by Section 17.1.7 below. Additionally, Contractor shall furnish to Owner within thirty (30) days before the expiration date of the coverage of each required insurance set forth in this Article 17, a certificate or certificates containing the information required by Section 17.1.7 below and certifying that such insurance has been renewed and remains in full force and effect.

§ 17.1.7 All policies for each insurance required hereunder shall: (i) name Owner as an additional insured (this requirement shall not apply to workers' compensation insurance, employers' liability insurance, Contractor's property and equipment insurance or professional liability insurance); (ii) include a standard severability of interest clause; (iii) provide for not less than thirty (30) days' prior written notice to Owner by registered or certified mail of any cancellation, restrictive amendment, non-renewal or change in coverage; (iv) contain a waiver of subrogation holding Owner free and harmless from all subrogation rights of the insurer; and (v) provide that such required insurance hereunder is the primary insurance and that any similar insurance that Owner may have shall be deemed in excess of such primary insurance.

§ 17.1.8 All policies for each insurance required hereunder shall be issued by insurance companies that are either licensed by the State of Connecticut and have a Best's Key Rating Guide of A- or better, or otherwise deemed acceptable by Owner in its sole discretion.

§ 17.1.9 Contractor shall either have its subcontractors covered under the insurance required hereunder, or require such subcontractors to procure and maintain the insurance that Contractor is required to procure and maintain under this Agreement.

§ 17.1.10 No provision of this Article 17 shall be construed or deemed to limit Contractor's obligations under this Agreement to pay damages or other costs and expenses.

§ 17.1.11 Owner shall not, because of accepting, rejecting, approving, or receiving any certificate of insurance required hereunder, incur any liability for: (i) the existence, non-existence, form or legal sufficiency of the insurance described on such certificate, (ii) the solvency of any insurer, or (iii) the payment of losses.

§ 17.2  
(Paragraphs deleted)

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## PROFESSIONAL LIABILITY INSURANCE

*(Paragraphs deleted)*

§ 17.2.1 The Contractor shall purchase and maintain professional liability insurance from the Contractor's usual sources as primary coverage for the Contractor's liability for professional services rendered under the Contract. The minimum limits of liability purchased with such coverage shall be equal to \$1,000,000.00 for each occurrence.

§ 17.2.2 To the extent damages are covered by professional liability insurance, the Owner and Contractor waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

## ARTICLE 18 ARTICLE OMITTED

## 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 place where the Project is located.

### § 19.3 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the period specified by applicable law, but in any case not more than 10 years after the Completion Date. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.3.

*(Paragraphs deleted)*

## ARTICLE 20 TERMINATION OF THE CONTRACT

### § 20.1 TERMINATION BY THE CONTRACTOR

If the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit on such executed Work and actual costs and damages incurred by reason of such termination.

### § 20.2 TERMINATION BY THE OWNER FOR CAUSE

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly 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, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the above reasons 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 may (i) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon intended to be incorporated into the Project; (ii) accept assignment of subcontracts pursuant to Article 11, and (iii) 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.

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§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The obligation for payment of amount to be paid to the Contractor or Owner, as the case may be, shall survive termination of the Contract.

## § 20.3 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 20.3.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 20.3.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders, except for subcontracts for which Owner accepts an assignment thereof from Contractor, and enter into no further subcontracts and/or purchase orders.

§ 20.3.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed in accordance with this Contract, and costs incurred by reason of such termination, however the Contractor and any party claiming through or under the Contractor shall not be entitled to any overhead or profit on the Work not so executed or unexecuted.

## § 20.4 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 20.4.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 20.4.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

## ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Definition. A Claim is demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 21.2 Upon receipt from the Contractor of a written notice of claim as provided in Paragraph 21.1, the Owner shall review such claim and if he determines that any Work in dispute should proceed, he shall issue to the Contractor a written order to proceed in which he shall approve or deny the Contractor's claim, in hold or in part, or shall instruct the Contractor to proceed with the work subject to a later determination by the Owner, of the Contractor's right to extra payment.

§ 21.3 To the extent that the Owner, when issuing the written order to proceed described in 21.2 approves Contractor's claim, the Contract Sum shall be subsequently adjusted, as provided in Article 13. If the Owner, when issuing his written order to proceed, denies, in whole or in part, Contractor's claim, the Contractor shall have the right to separately pursue all remedies available at law or equity, but he shall nonetheless proceed with the Work without delay, in any case and Owner shall continue to make payments in accordance with and subject to the Contract Documents.

§ 21.4 Section Omitted.

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§ 21.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

§ 21.6 Claims for Additional Time.

§ 21.6.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, or by delay authorized by Owner, or by any other cause which the Owner determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time not exceeding the length of delay as the Owner may determine, and in the event of labor strikes, not more than five (5) days. Any claim for an extension of time shall be made in writing to Owner not more than ten (10) days after the commencement of the delay; otherwise it shall be deemed waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Further, no claim for delay shall be allowed on account of delays caused by acts or omissions of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable due to causes within such parties' control.

§ 21.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 21.6.3 The Contractor, in submitting its bid, acknowledges that it has taken into consideration normal weather conditions. Normal weather does not mean statistically average weather, but rather means a range of weather patterns which might be anticipated based on weather data for the past ten (10) years, (i.e., conditions which are not extremely unusual). Normal weather conditions shall be determined from the public historical records available, including the U.S. Department of Commerce, Local Climatological Data Sheets, National Oceanic and Atmospheric Administration/Environmental Data and Information Service, National Climatic Center and National Weather Service. The data sheets to be used shall be those for the locality or localities closest to the site of the Work. No additional compensation will be paid to the Contractor because of adverse weather conditions; however, an extension of time for abnormal weather will be considered by the Owner.

§ 21.6.4 Except with respect to a suspension of the Work authorized by the Owner pursuant to Section 20.4 or the performance of changes in the Work under and subject to Article 13, Contractor hereby agrees that Contractor shall have no claim for damages of any kind on account of any delay in commencement of the Work and /or any delay or suspension of any portion of the Work, whether such delay is caused by the Owner or otherwise. Contractor acknowledges that Contractor's sole remedy for any such delay and/or suspension will be an extension of time as may be expressly provided herein.

§ 21.7 Section Omitted.

§ 21.8 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 litigation but, in such event, mediation shall proceed in advance of litigation, 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.

## § 21.9 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.

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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 21.9 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## § 21.10 RESOLUTION OF CLAIMS AND DISPUTES

§ 21.10.1 **Decision of Owner.** Claims shall be referred initially to the Owner for decision. An initial decision by the Owner shall be required as a condition precedent to mediation or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ 21.10.2 The Owner will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party; (2) reject the Claim in whole or in part; (3) approve the Claim; (4) suggest a compromise; or (5) advise the parties that the Owner is unable to resolve the Claim if the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 21.10.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Owner in rendering a decision in accordance with Article 21.

§ 21.10.4 If the Owner requests Contractor to provide a response to a Claim or to furnish additional supporting data, Contractor shall respond, within ten (10) days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Owner when the response or supporting data will be furnished or advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 21.10.5 The Owner will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the Contractor of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Owner shall be subject to further dispute resolution.

§ 21.10.6 Upon a Claim by Owner against the Contractor or at any time thereafter, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 21.10.7 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Owner or mediation or other dispute resolution process.

## § 21.11 MEDIATION

§ 21.11.1 Any claim which is not resolved by mediation shall be litigated in a court of competent jurisdiction in Hartford, Connecticut. The parties waive their rights to a jury trial. Prior to litigation, the parties shall endeavor to commence mediation within sixty (60) days after a Claim arises which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association.

§ 21.11.2 The parties shall split, and pay their respective shares for, the cost of mediator's fee and any filing fees. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## ARTICLE 22 INITIAL INFORMATION

The Contractor's performance of the services set forth in this Agreement is based upon the RFP.

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## ARTICLE 23 COMMISSIONING SERVICES

§ 23.1 The Contractor shall consult with the Owner, research applicable criteria, attend Project meetings, communicate with members of the Project team, and issue progress reports. The Contractor shall coordinate the services provided by the Contractor and the Contractor's consultants with those services provided by the Owner and the Owner's consultants.

§ 23.2 The Contractor shall prepare, and periodically update, a schedule of Commissioning Services that shall identify milestone dates for decisions required of the Owner, services furnished by the Contractor, and completion of documentation provided by the Contractor. The Contractor shall coordinate the Commissioning Services schedule with the Owner's Project schedule.

§ 23.3 The Contractor shall make a presentation to explain the Commissioning Services to representatives of the Owner.

§ 23.4 The Contractor shall submit commissioning documentation to the Owner at intervals appropriate to the process for purposes of evaluation and approval by the Owner. The Contractor shall be entitled to rely on approvals received from the Owner to complete the Commissioning Services.

### § 23.6 COMMISSIONING PLAN

The Contractor shall prepare a commissioning plan based on the systems to be commissioned, program and schedule (the "Commissioning Plan"). The Commissioning Plan will describe the commissioning process for the Project and may contain a description of the objectives of the commissioning, a list of participants and their roles and responsibilities, an outline of the management structure, a description of how the plan is to be implemented, the commissioning schedule, specific details about design reviews, a list of systems and components being commissioned and reporting formats.

### § 23.7 DESIGN INTENT DOCUMENT

§ 23.7.1 The Contractor shall prepare a design intent document with information provided by the Owner and the Owner's consultants and contractors, which document will describe the performance criteria for the systems to be commissioned (the "Design Intent Document"). The performance criteria described in the Design Intent Document shall be quantifiable and measurable through objective testing.

§ 23.7.2 After the Owner's approval of the Design Intent Document, the Contractor shall revise the Design Intent Document to reflect any changes approved by the Owner as an Additional Service.

### § 23.8 DESIGN REVIEW

The Contractor shall review the design of the systems to be commissioned for the limited purpose of determining if the systems as designed will achieve the requirements of the Design Intent Document. The Contractor's review shall be made with such reasonable promptness as to cause no delay in the activities of the Owner or Owner's consultants, while allowing sufficient time in the Contractor's professional judgment to permit adequate review. Review of the design is not conducted for the purpose of determining the accuracy and completeness of the design documents and other details such as quality of materials, appearance, dimensions, quantities and costs. Upon completion of the review, the Contractor shall issue written comments and recommendations.

### § 23.9 COMMISSIONING SPECIFICATIONS

§ 23.9.1 The Contractor shall review the Contract Documents and recommend modifications necessary for coordination with the commissioning requirements and processes, which may include equipment submittals, operation and maintenance manuals, system readiness tests, and personnel training.

§ 23.9.2 The Contractor shall provide commissioning specifications for inclusion in the Contract Documents, which will define the contractor's responsibilities related to commissioning (the "Commissioning Specifications"). The Commissioning Specifications will identify systems to be commissioned and may include detailed checklists, test procedures, required test results and warranty requirements.

### § 23.10 SHOP DRAWING AND SUBMITTAL REVIEW

§ 23.10.1 The Contractor shall review contractors' submittals, such as Shop Drawings, Product Data and Samples for the systems to be commissioned, for the limited purpose of evaluating the system's ability to achieve the requirements

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of the Design Intent Document. The Contractor's review shall be made with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Owner's consultants or contractors, while allowing sufficient time in the Contractor's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the construction contractor as required by the Contract Documents. The Contractor's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Contractor, of any construction means, methods, techniques, sequences or procedures.

§ 23.10.2 Upon completion of the review, the Contractor shall issue written comments for those submittals that deviate from the requirements of the Design Intent Document. The Owner may choose to accept the deviations, in which case the Contractor shall revise the Design Intent Document and the related Commissioning Specifications as an Additional Service.

## § 23.11 COMMISSIONING MEETINGS

The Contractor shall conduct and document commissioning coordination meetings with the Owner, Owner's consultants, contractors and subcontractors, whose systems are included in the Commissioning Specifications. The Contractor shall coordinate these meetings with the Project schedule.

## § 23.12 REVIEW OF DOCUMENTATION DURING CONSTRUCTION

During construction the Contractor shall review documentation such as meeting minutes, field reports, minor changes in the Work, Construction Change Directives, and Change Orders related to the systems to be commissioned. The Contractor shall report to the Owner changes that will prevent the systems from performing as required by the Design Intent Document. The Owner may choose to accept the changes, in which case the Contractor shall revise the Design Intent Document and the related Commissioning Specifications as an Additional Service.

## § 23.13 OPERATIONS AND MAINTENANCE MANUAL REVIEW

Prior to the start of operator training, the Contractor shall review the operations and maintenance manuals submitted by the contractors for the systems to be commissioned for conformance with the Commissioning Specifications.

## § 23.14 OPERATOR TRAINING

§ 23.14.1 The Contractor shall review contractors' planning, scheduling, content and documentation for operator training sessions for conformance with the Commissioning Specifications.

§ 23.14.2 The Contractor shall provide operator systems training including the requirements of the Design Intent Document, special design features, operating sequences and limitations, functional performance test procedures, and maintenance cycles of the various systems. This training will begin before the contractor demonstrates the system performance using the functional performance tests. During the commissioning of the systems, the Contractor shall provide operator field training by having the operators assist in the verification of the functional performance tests.

§ 23.14.3 The Contractor shall observe contractors' training and maintain a training log for inclusion into the final commissioning report. The training log will include the attendees' names, training dates, system or equipment on which training was performed, and the name, title and contact information of the trainer.

## § 23.15 TEST REPORT REVIEW

Before the start of functional performance testing, the Contractor shall observe a portion of the system readiness tests and shall review the system readiness test reports required by the Contract Documents for the systems to be commissioned. The Contractor shall report to the Owner any observed deficiencies for correction prior to the start of functional performance testing.

## § 23.16 FUNCTIONAL PERFORMANCE TESTING AND DOCUMENTATION

The Contractor shall direct, observe and document the functional performance tests for each system to be commissioned. The functional performance tests shall follow the procedures included in the Commissioning Specifications. The Contractor shall submit functional performance test reports for each system to the Owner for review.

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## § 23.17 DEFICIENCY CORRECTION

The Contractor shall generate a corrective action report for each deficiency identified during functional performance testing. The Contractor shall maintain a log of the corrective action reports. Each deficiency shall be resolved by the appropriate contractor and, after correction of the deficiency, the Contractor shall direct, observe, and document re-testing to confirm that the deficiency has been corrected as an Additional Service.

## § 23.18 FINAL COMMISSIONING REPORT

The Contractor will prepare a final commissioning report including the Commissioning Plan, Design Intent Document, Commissioning Specifications, blank functional performance test procedure forms, system readiness tests reports, functional performance test reports, corrective action reports and log, and operator training plans and log.

## § 23.19 POST-OCCUPANCY REVIEW

The Contractor shall meet with the Owner prior to one year after the Completion Date to review the operations and performance of the commissioned systems and to make appropriate recommendations to the Owner.

## ARTICLE 24 ADDITIONAL SERVICES

§ 24.1 To avoid a delay, the Contractor shall provide the following Additional Services and shall notify the Owner with reasonable promptness. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Contractor, and the Contractor shall have no further obligation to provide those services:

- .1 Review of a contractor's submittal out of sequence from the submittal schedule agreed to by the Contractor;
- .2 Responses to a contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to the Design Intent Document and Commissioning Specifications resulting there from; or
- .4 Commissioning Services provided 60 days after the originally scheduled date for completion of the Commissioning Services in the Commissioning Services schedule.

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

OWNER

TOWN OF STRATFORD

*(Row deleted)*

By: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_

*(Printed name and title)*

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## 24 ADDITIONAL SERVICES

### PAGE 3

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Work shall include, without limitation, the Work described in (i) that certain document entitled "\_\_\_\_\_", a copy of which document is attached hereto as Exhibit A and made a part hereof ("RFP"); and (ii) that certain documents submitted by the Contractor to the Owner in response to the RFP, a copy of which document submitted by the Contractor is attached hereto as Exhibit B and made a part hereof (the "Proposal"). In the event of any conflicting provisions between the RFP, Article 23 of this Agreement and the Proposal, such provisions shall be construed according to the following priorities: highest priority, RFP; second priority, this Agreement; and last priority, the Proposal. The term Commissioning Services as used herein shall mean the Work described in the Contract Documents; and the term Additional Services as used herein shall mean each service identified as an Additional Service in Article 23 of this Agreement unless such service is already included in the scope of the Work under the RFP and Proposal.

### ~~ARTICLE 2 — DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION~~

### ARTICLE 2 DATE OF COMMENCEMENT AND FINAL COMPLETION

~~§ 2.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.~~

~~(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)~~

as set forth in a written notice from the Owner to the Contractor (the "Notice to Proceed") that directs the Contractor to commence such Work (the "Date of Commencement").

~~§ 2.2 The Contract Time shall be measured from the date of commencement. The Contract Time, as set forth in Section 2.3 below, shall be measured from the Date of Commencement.~~

~~§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ( ) days from the date of commencement, or as follows:~~

~~(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)~~

in accordance with the schedule of commissioning services prepared by the Contractor in accordance with the RFP and approved by the

Portion of Work

Substantial Completion Date

Owner (the "Completion Date"), subject to adjustments of this Contract Time as provided in the Contract Documents.

~~(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)~~

The Owner and Contractor hereby acknowledge and agree that time is of the essence with respect to Contractor's performance of the Work hereunder. On the Date of Commencement Contractor shall immediately commence performance of the Work and continue to perform the same during the term of this Agreement in accordance with the commissioning services schedule set forth in Section 2.3. Owner and Contractor recognize the difficulties involved in proving actual damages and losses suffered by Owner if the Work is not completed and ready for Owner's acceptance by the Completion Date. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for any such delay in completion or readiness for acceptance (but not as a penalty) Contractor shall pay Owner One Thousand and 00/100 Dollars (\$1,000.00) for each calendar day beyond the Completion Date that Contractor fails to complete all of the Work and have the same ready for Owner's acceptance until all such Work is completed by Contractor and readied by Contractor for acceptance by Owner.

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...

§ 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.)*

~~a 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.)~~below.

§ 3.2 The Stipulated Sum shall be ~~(\$ )~~, subject to additions and deductions ~~\_\_\_\_\_~~ and 00/100 Dollars (\$ \_\_\_\_\_ .00), in accordance with the Contractor's Building Commissioning Services Fee Proposal Detail dated \_\_\_\_\_, a copy of which commissioning services fee proposal detail is attached hereto as Exhibit C and made a part hereof ("Fee Proposal"), subject to additions and deletions 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.)*

None.

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§ 3.2.2 Unit prices, if any:

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

prices are set forth on the Fee Proposal.

Item	Units and Limitations	Price Per Unit (\$0.00)
------	-----------------------	-------------------------

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

*(Identify allowance and state exclusions, if any, from the allowance price.)*

Stipulated Sum, if any: None.

Item	Allowance
------	-----------

## ~~§ 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.~~

~~§ 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.)*~~

## ~~§ 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.~~

~~§ 3.4.2 The Contractor's Fee:~~

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*(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.)*

## **§ 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. Such 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.)~~

~~§ 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:~~

### ~~§ 3.4.3.3 Unit Prices, if any:~~

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

<del>Item</del>	<del>Units and Limitations</del>	<del>Price Per Unit (\$0.00)</del>
-----------------	----------------------------------	------------------------------------

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

~~(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)~~

<del>Item</del>	<del>Allowance</del>
-----------------	----------------------

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

## **§ 4.1 PROGRESS PAYMENTS/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. Payments for Commissioning Services shall be made monthly in proportion to the Commissioning Services performed as set forth on the Fee Proposal and shall be based upon the Contractor's invoices submitted to the Owner.~~

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

~~month.~~

~~§ 4.1.3 Provided that an Application for Payment invoice is received by the Architect-Owner not later than the first day of a month, the Owner shall make payment of the certified-invoiced amount to the Contractor not later than the last day of the same month. If an Application for Payment invoice is received by the Architect-Owner after the date fixed above, payment shall be made by the Owner not later than (—) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)thirty (30) days after the Owner receives the invoice.~~

~~§ 4.1.4 Retainage, if any, shall be withheld as follows: five percent (5%) from Contractor's monthly payment.~~

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~~§ 4.1.5~~ Payments due and unpaid under the Contract shall bear no interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. ~~due.~~

~~(Insert rate of interest agreed upon, if any.)~~ § 4.1.6 Contractor shall be entitled to requisition for and be paid all retainage, exclusive of one hundred fifty percent (150%) of the reasonable estimates of the costs to complete any remaining work that is included on a punchlist mutually developed by Owner and Contractor. The punchlist shall be developed prior to Contractor's submission of a final invoice. As items on the punchlist are completed, Contractor shall be paid the cost of the completed items of work upon requisition by Contractor. Any disputed amounts shall be set forth in writing by Owner to Contractor and supported by appropriate references to the Contract Documents.

~~%-§ 4.1.7~~ A 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.

...

§ 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~~ 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;
- ~~2~~ 2 — the contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a guaranteed maximum price; and
- ~~3~~ 3 — a final Certificate for Payment has been issued by the Architect. Contract.

~~§ 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, or as follows:

...

For any claim subject to, but not resolved by, mediation pursuant to Section ~~21.3, 21.11,~~ the method of binding dispute resolution shall be as follows:

~~(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, 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.)~~

— Arbitration pursuant to Section 21.4 of this Agreement

— Litigation in a court of competent jurisdiction

— Other (Specify)

litigation in a court of competent jurisdiction.

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§ 6.1.1 The Agreement is this executed AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. Scope, as amended.

§ 6.1.2 The Supplementary and other Conditions of the Contract: Contract, if any, are set forth in the RFP.

Document	Title	Date	Pages
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## § 6.1.3 The Specifications:

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

Specifications are set forth in the RFP.

Section	Title	Date	Pages
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## § 6.1.4 The Drawings:

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

There are no drawings.

Number	Title	Date
--------	-------	------

## § 6.1.5 The Addenda, if any:

Number	Date	Pages
--------	------	-------

~~Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are enumerated in this Article 6. There are no addenda.~~

...

~~1 — Exhibit A, Determination of the Cost of the Work, if applicable.~~

~~Exhibit A – Request for Proposal;~~

~~2 — AIA Document E201™ – 2007, Digital Data Protocol Exhibit, if completed, or the following: Exhibit B – Proposal; and~~

~~3 — Other documents:~~

~~(List here any additional documents that are intended to form part of the Contract Documents.)~~

Exhibit C – Fee Proposal.

...

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-Owner. 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.

...

The Contract Documents form the Contract for ~~Construction~~ Commissioning Services. 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.

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## § 7.3 THE WORK AND COMMISSIONING SERVICES

The term "Work" means the construction and terms "Work" and "Commissioning Services" shall mean the commissioning services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.

## § 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, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this 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 or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 or 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 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmission, unless otherwise provided in the Agreement or in the Contract Documents.

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§ 8.1.1 The Owner shall furnish all necessary surveys and a legal description of the site, identify the systems to be commissioned and furnish a program setting forth the Owner's objectives, schedule, constraints and criteria, system requirements and relationships, special equipment and site requirements.

§ 8.1.2 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Owner shall provide to the Contractor data necessary for the Commissioning Services which may include design drawings, construction documents, record drawings, shop drawings and submittals, operation and maintenance manuals, master plans, operation costs, operation budgets, and pertinent records relative to historical building data, building equipment, furnishings and repairs.

§ 8.1.3 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. The Owner shall provide access to the property, buildings, and personnel necessary for the Contractor to provide the Commissioning Services. The personnel shall conduct tours and walk-throughs and explain the facility's original, current and anticipated future use.

## § 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 repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written

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~~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, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor.~~

§ 8.1.4 The Owner may furnish the services of design consultants, testing agencies, and contractors necessary to allow the Contractor to provide the Commissioning Services.

§ 8.1.5 To the extent information is furnished or made available by the Owner to the Contractor, such information is furnished solely for the convenience of Contractor only and shall not relieve Contractor from its duties under the Contract Documents.

## ~~§ 9.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR INDEMNIFICATION~~

~~§ 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. Contractor hereby agrees to and shall at all times defend, indemnify and hold harmless the Owner and its subsidiaries, affiliates, officers, agents and employees (collectively "Indemnitees") from any and all losses, costs, expenses (including court costs and attorneys' fees, interest and profits), claims, demands, suits by any person or persons, injuries, damages or death and other liabilities of whatsoever kind or nature arising out of or resulting from the performance (or attempted performance) of the Work, or otherwise caused by, incident to, connected with or arising directly or indirectly out of: (a) the performance of the Contract by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable or (b) any act, omission, or negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnity shall survive the termination of this Contract~~

§ 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 8.1.1, 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. Contractor's indemnification obligation covers all acts arising out of but not limited to the following:

- .1 Bodily injury, sickness, disease or death, or to injury to or destruction of property including the loss of use resulting therefrom,
  - .a caused by, incident to, connected with, or arising directly or indirectly out of the performance of the Contract Documents;
  - .b arising directly or indirectly out of the presence of any person in, on, or about any part of the Project site or the streets, sidewalks and property adjacent thereto; or
  - .c arising directly or indirectly out of the use, misuse, or failure of any machinery or equipment (including but not limited to, scaffolding, ladders, hoists, rigging, supports, etc.) whether or not such

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machinery or equipment was furnished, rented, or loaned by the Owner, its officers, employees, agents or servants, or others;

2. Failure of Contractor in any way to comply with the requirements of the Fair Labor Standards Act, as amended, and all other applicable Federal, State or local statutes, laws, ordinances, rules, regulations (including, but not limited to, the Occupational Safety and Health Act of 1970) or orders or any term or provision of the Contract Documents (with all of which all Subcontractors agree to fully comply).

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to 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. In claims against any Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Agreement 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.

If Contractor fails to defend any person indemnified hereunder, such person may defend any suit, action or other legal proceeding and the actual and reasonable costs thereof (including, without limitation, actual and reasonable attorneys' fees) shall be included as part of the loss, cost, damage and expense covered by Contractor's indemnity.

## § 9.2 SUPERVISION AND CONSTRUCTION PROCEDURESEQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

In performing the Work the Contractor (i) shall comply with applicable laws, rules, regulations, ordinances, codes, orders and permits of any and all federal, state and local governmental and quasi-governmental bodies, agencies, authorities and courts having jurisdiction regarding affirmative action and equal employment opportunity; and (ii) shall not discriminate in employment or in the provision of equal housing opportunities to any person in any manner prohibited by the applicable provisions of federal and state law and regulation as presently in full force and effect, as may be amended.

§ 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 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 and their agents and employees, 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 MATERIALSPERFORMANCE OF THE WORK

The Work shall be performed by Contractor in a timely and good workmanlike manner and in accordance with: (i) sound practices of, and pursuant to a standard of care exercised by, commissioning service providers performing similar services under like circumstances; (ii) any and all instructions, guidance and directions provided by Owner to Contractor; (iii) this Agreement and the Contract Documents; and (iv) any and all applicable laws, rules, regulations, ordinances, codes, orders and permits of any and all federal, state and local governmental and quasi-governmental bodies, agencies, authorities and courts having jurisdiction.

§ 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.

§ 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.

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## ~~§ 9.4 WARRANTY~~

~~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.~~

## ~~§ 9.5 TAXES~~

~~The Contractor shall pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~

## ~~§ 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 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. If the Contractor performs Work knowing it to be contrary to 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. Allowance amounts shall not include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, and profit.~~

## ~~§ 9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES~~

~~§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, 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.~~

## ~~§ 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.~~

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## ~~§ 9.10 USE OF SITE~~

~~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.~~

## ~~§ 9.11 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 or 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 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 such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.~~

## ~~§ 9.14 ACCESS TO WORK~~

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

## ~~§ 9.15 INDEMNIFICATION~~

~~§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, 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), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. 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.~~

~~§ 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 and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. 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 The Architect will visit the site at intervals appropriate to the stage of the construction 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~~

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~~programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.~~

~~§ 10.3 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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.~~

~~§ 10.4 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.~~

~~§ 10.5 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.~~

~~§ 10.6 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.~~

## ARTICLE 10 SECTION OMITTED

~~§ 10.7 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.~~

~~§ 10.8 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~

~~§ 10.9 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.~~

~~§ 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.~~

~~§ 11.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect~~ the names of the Subcontractors or suppliers 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 reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor 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 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, Owner~~, 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.~~

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## ~~ARTICLE 12 — CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS~~

~~§ 12.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including these portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Article 21.~~

~~§ 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. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.~~

## § 11.4 SUBCONTRACTUAL RELATIONS

§ 11.4.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by 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. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 11.4.2 Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following provisions:

- .1 An agreement that the Owner is a third-party beneficiary of the Sub-contract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, express or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement;
- .2 A provision that the agreement shall be terminable upon seven (7) days' written notice by the Contractor (or Subcontractor) or, if the Subcontract (or Sub-subcontract) has been assigned to Owner, by Owner;
- .3 A provision that neither the Contractor nor the Subcontractor (or Sub-subcontractor) shall have the right to require arbitrations of any disputes; and
- .4 A provision requiring the Subcontractor (or Sub-subcontractor) to submit certificates and waivers of liens for work completed by it and its Sub-subcontractors as a condition precedent to the disbursement of the progress payment next due and owing.
- .5 Subcontractor (or Sub-subcontractor) hereby agrees that it shall have no claim for damages of any kind on account of any delay in commencement of the Work and/or any delay or suspension of any portion of the Work, whether such delay is caused by the Contractor, the Owner or otherwise. Subcontractor (or Sub-subcontractor) acknowledges that its sole remedy for any such delay and/or suspension will be an

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extension of time as may be expressly provided herein.

- .6 Subcontractor acknowledges that delays resulting from changes in the work, extreme weather, changes to the sequencing of the work, material shortages, transportation, strikes and other causes are inherent in the construction process. Subcontractor acknowledges that it has accounted for delays in its prices and agrees to bring no claims for money damages as a result of any delay or hindrance. In the event that Subcontractor claims that it has been delayed or hindered, it shall submit a request for a time extension to Contractor in the manner and pursuant to the time periods set forth in the Contract Documents. If it is determined that Subcontractor has been delayed or hindered through no fault of its own, the time for performance hereunder will be extended and the extension of time will be Subcontractor's sole remedy for the delay. Under no circumstances will the Contractor or Owner be liable to the Subcontractor for damages resulting from any delays or hindrances.
- .7 A provision requiring the Subcontractor (or Sub-subcontractor) to comply with applicable laws, rules, regulations, ordinances, codes, orders and permits of any and all federal, state and local governmental and quasi-governmental bodies, agencies, authorities and courts having jurisdiction, including, but not limited to, affirmative action and equal employment opportunity laws.
- .8 A provision that the Subcontractor (or Sub-subcontractor) shall not discriminate in employment or in the provision of equal housing opportunities to any person in any manner prohibited by the applicable provisions of federal and state law and regulation as presently in full force and effect, as may be amended.

§11.4.3 The Contractor shall be responsible for any and all Subcontractors working under it and shall carry insurance for all Subcontractors or ensure that they are carrying it themselves so as to relieve the Contractor and Owner and their respective officers, directors, agents, and employees of any and all liability arising out of the respective subcontractor's work.

§ 11.4.4 The Owner assumes no responsibility for the overlapping or omission of parts of the Work by various Subcontractors in their agreements with the Contractor, because this is solely the Contractor's responsibility.

## § 11.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 11.5.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner pursuant to Sections 20.2 or 20.3 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 11.5.2 The Contractor shall, upon the request of Owner, submit a copy of each subcontract signed by Contractor in connection with the Project. Each subcontract shall contain a contingent assignment of the subcontract to the Owner consistent with Sections 11.4 and 11.5.

## ARTICLE 12 SECTION OMITTED

§ 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, Owner and Contractor,~~ or by written Construction Change Directive signed by the ~~Owner and Architect, Owner.~~

§ 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, Owner,~~ by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of

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a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The ~~Architect-Owner~~ 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-Owner~~ will prepare a Change Order.

~~§ 13.3 The Architect will have authority to-Owner may 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.~~

~~§ 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.~~

## PAGE 9

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

## PAGE 10

~~§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.4.3. If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, 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 by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine, subject to the provisions of Article 21.~~

~~§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, 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 by other causes which the Architect determines may justify 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

### ARTICLE 15 PAYMENTS AND COMPLETION

#### § 15.1 APPLICATIONS FOR PAYMENT-FINAL COMPLETION AND FINAL PAYMENT

~~§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used in reviewing the Contractor's Applications for Payment. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of Contractor's final invoice, the Owner will make such inspection.~~

~~§ 15.1.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee, plus (3) payrolls for the period covered by the present Application for Payment. Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the~~

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Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.1.3 ~~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. The making of final payment shall constitute a waiver of claims by the Owner except those arising from~~

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 15.1.4 ~~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. Acceptance of final payment by the Contractor, a Subcontractor or material 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 final invoice.~~

## ~~§ 15.2 CERTIFICATES FOR PAYMENT~~

§ 15.2.1 ~~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 in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.2.3.~~

§ 15.2.2 ~~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 and that the quality of the Work is in accordance with the Contract Documents. 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~

§ 15.2.3 ~~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 15.2.2 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 15.2.1. 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 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;~~

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- ~~.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.~~

~~§ 15.2.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.~~

## ~~§ 15.3 PROGRESS PAYMENTS~~

~~§ 15.3.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.~~

~~§ 15.3.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.~~

~~§ 15.3.3 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.~~

## ~~§ 15.4 SUBSTANTIAL COMPLETION~~

~~§ 15.4.1 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.~~

~~§ 15.4.2 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.~~

~~§ 15.4.3 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.~~

~~§ 15.4.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

## ~~§ 15.5 FINAL COMPLETION AND FINAL PAYMENT~~

~~§ 15.5.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, 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 terms and conditions of 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 15.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~

~~§ 15.5.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied~~

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after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.5.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 — liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 — failure of the Work to comply with the requirements of the Contract Documents; or
- .3 — terms of special warranties required by the Contract Documents.

§ 15.5.4 Acceptance of final payment by the Contractor, a Subcontractor or material 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 final Application for Payment.

## ARTICLE 16 — PROTECTION OF PERSONS AND PROPERTY

### § 16.1 SAFETY PRECAUTIONS AND PROGRAMS

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 or the Contractor's Subcontractors or Sub-subcontractors; 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 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 for damage or loss 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 in addition to the Contractor's obligations under Section 9.15.

### § 16.2 HAZARDOUS MATERIALS

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. When the material or substance has been rendered harmless, 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.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, 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), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

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## ARTICLE 17 — INSURANCE AND BONDS

### ARTICLE 16 — ARTICLE OMITTED

#### ARTICLE 17 — INSURANCE

§ 17.1 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 listed below in this Article 17, including, but not limited to, 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 9.15-9.1. 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. ~~The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) the Owner, the Architect and the Architect's Consultants 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 as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.~~

§ 17.1.1 Workers compensation and employers' liability insurance meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows: \$1,000,000 for each accident, \$1,000,000 for each disease/policy limit and \$1,000,000 for disease for each employee.

§ 17.1.2 Commercial general liability insurance including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

_____	<u>\$1,000,000 Each Occurrence</u>
_____	<u>\$3,000,000 General Aggregate</u>
_____	<u>\$2,000,000 Personal and Advertising Injury</u>
_____	<u>\$2,000,000 Products-Completed Operations Aggregate</u>

- .1 The policy shall be endorsed to have a minimum of \$2,000,000.00 of the General Aggregate apply to this Project only. Owner shall be included as an additional insured.
- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least two (2) years after final payment.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 9.1 of this Agreement.

§ 17.1.3 Automobile liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage:

_____	<u>\$1,000,000 Each Accident</u>
_____	<u>\$2,000,000 Aggregate</u>

§ 17.1.4 Contractor's property and equipment insurance covering all property and equipment to be used in connection with the Work hereunder in an amount equal to one hundred (100%) percent of actual cash value.

§ 17.1.5 In the event performance of the Work requires the abatement of hazardous materials, environmental liability insurance with a minimum combined single limit coverage, including coverage for automobiles and general liability, of not less than five million (\$5,000,000.00) dollars, including sudden and accidental exposures for all Contractor's operations hereunder.

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§ 17.1.6 Prior to commencement of the Work, Contractor shall submit to Owner a certificate or certificates for each required insurance referenced in this Article 17 certifying that such insurance is in full force and effect and setting forth the information required by Section 17.1.7 below. Additionally, Contractor shall furnish to Owner within thirty (30) days before the expiration date of the coverage of each required insurance set forth in this Article 17, a certificate or certificates containing the information required by Section 17.1.7 below and certifying that such insurance has been renewed and remains in full force and effect.

§ 17.1.7 All policies for each insurance required hereunder shall: (i) name Owner as an additional insured (this requirement shall not apply to workers' compensation insurance, employers' liability insurance, Contractor's property and equipment insurance or professional liability insurance); (ii) include a standard severability of interest clause; (iii) provide for not less than thirty (30) days' prior written notice to Owner by registered or certified mail of any cancellation, restrictive amendment, non-renewal or change in coverage; (iv) contain a waiver of subrogation holding Owner free and harmless from all subrogation rights of the insurer; and (v) provide that such required insurance hereunder is the primary insurance and that any similar insurance that Owner may have shall be deemed in excess of such primary insurance.

§ 17.1.8 All policies for each insurance required hereunder shall be issued by insurance companies that are either licensed by the State of Connecticut and have a Best's Key Rating Guide of A- or better, or otherwise deemed acceptable by Owner in its sole discretion.

§ 17.1.9 Contractor shall either have its subcontractors covered under the insurance required hereunder, or require such subcontractors to procure and maintain the insurance that Contractor is required to procure and maintain under this Agreement.

§ 17.1.10 No provision of this Article 17 shall be construed or deemed to limit Contractor's obligations under this Agreement to pay damages or other costs and expenses.

§ 17.1.11 Owner shall not, because of accepting, rejecting, approving, or receiving any certificate of insurance required hereunder, incur any liability for: (i) the existence, non-existence, form or legal sufficiency of the insurance described on such certificate, (ii) the solvency of any insurer, or (iii) the payment of losses.

## § 17.2 OWNER'S LIABILITY INSURANCE

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

## PROFESSIONAL LIABILITY INSURANCE

## ~~§ 17.3 PROPERTY INSURANCE~~

~~§ 17.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 15.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.~~

~~§ 17.3.2 The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~§ 17.3.3 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 12, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section 17.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 12, if any, and the subcontractors;~~

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sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

~~§ 17.3.4 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.~~

## ~~§ 17.4 PERFORMANCE BOND AND PAYMENT BOND~~

~~§ 17.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~

~~§ 17.4.2 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, unless compensable under Section A.2.7.3 in Exhibit A, Determination of the Cost of the Work.~~

~~§ 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 15.4.3, 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 written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~

~~§ 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.~~

§ 17.2.1 The Contractor shall purchase and maintain professional liability insurance from the Contractor's usual sources as primary coverage for the Contractor's liability for professional services rendered under the Contract. The minimum limits of liability purchased with such coverage shall be equal to \$1,000,000.00 for each occurrence.

§ 17.2.2 To the extent damages are covered by professional liability insurance, the Owner and Contractor waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

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## ARTICLE 18 ~~ARTICLE OMITTED~~

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The Contract shall be governed by the law of the place where the Project is located, ~~except, that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.4.~~located.

#### ~~§ 19.3 TESTS AND INSPECTIONS~~ COMMENCEMENT OF STATUTORY LIMITATION PERIOD

~~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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor. The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the period specified by applicable law, but in any case not more than 10 years after the Completion Date. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.3.~~

#### ~~§ 19.4~~ COMMENCEMENT OF STATUTORY LIMITATION PERIOD

~~The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.4.~~

...

~~If the Architect fails to certify payment as provided in Section 15.2.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages properly executed, including reasonable overhead and profit on such executed Work and actual costs and damages incurred by reason of such termination.~~

...

~~§ 20.2.2~~ When any of the above reasons exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, 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 may (i) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may intended to be incorporated into the Project; (ii) accept assignment of subcontracts pursuant to Article 11, and (iii) 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.

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~~§ 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 Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The obligation for payment of amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.~~

...

~~The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. § 20.3.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.~~

§ 20.3.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders, except for subcontracts for which Owner accepts an assignment thereof from Contractor, and enter into no further subcontracts and/or purchase orders.

§ 20.3.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed in accordance with this Contract, and costs incurred by reason of such termination, however the Contractor and any party claiming through or under the Contractor shall not be entitled to any overhead or profit on the Work not so executed or unexecuted.

## § 20.4 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 20.4.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 20.4.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

...

§ 21.1 Claims, disputes and other matters in question Definition. A Claim is demand or assertion by one of the parties seeking, as a matter or right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor 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, except those waived as provided for in Section 21.8 and Sections 15.5.3 and 15.5.4, 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; the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 21.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. Upon receipt from the Contractor of a written notice of claim as provided in Paragraph 21.1, the Owner shall review such claim and if he determines that any Work in dispute should proceed, he shall issue to the Contractor a written order to

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proceed in which he shall approve or deny the Contractor's claim, in whole or in part, or shall instruct the Contractor to proceed with the work subject to a later determination by the Owner, of the Contractor's right to extra payment.

§ 21.3 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 the 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. To the extent that the Owner, when issuing the written order to proceed described in 21.2 approves Contractor's claim, the Contract Sum shall be subsequently adjusted, as provided in Article 13. If the Owner, when issuing his written order to proceed, denies, in whole or in part, Contractor's claim, the Contractor shall have the right to separately pursue all remedies available at law or equity, but he shall nonetheless proceed with the Work without delay, in any case and Owner shall continue to make payments in accordance with and subject to the Contract Documents.

§ 21.4 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Section Omitted.

§ 21.5 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

§ 21.6 Any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent. Claims for Additional Time.

§ 21.6.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, or by delay authorized by Owner, or by any other cause which the Owner determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time not exceeding the length of delay as the Owner may determine, and in the event of labor strikes, not more than five (5) days. Any claim for an extension of time shall be made in writing to Owner not more than ten (10) days after the commencement of the delay; otherwise it shall be deemed waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Further, no claim for delay shall be allowed on account of delays caused by acts or omissions of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable due to causes within such parties' control.

§ 21.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 21.6.3 The Contractor, in submitting its bid, acknowledges that it has taken into consideration normal weather conditions. Normal weather does not mean statistically average weather, but rather means a range of weather patterns which might be anticipated based on weather data for the past ten (10) years, (i.e., conditions which are not extremely

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unusual). Normal weather conditions shall be determined from the public historical records available, including the U.S. Department of Commerce, Local Climatological Data Sheets, National Oceanic and Atmospheric Administration/Environmental Data and Information Service, National Climatic Center and National Weather Service. The data sheets to be used shall be those for the locality or localities closest to the site of the Work. No additional compensation will be paid to the Contractor because of adverse weather conditions; however, an extension of time for abnormal weather will be considered by the Owner.

§ 21.6.4 Except with respect to a suspension of the Work authorized by the Owner pursuant to Section 20.4 or the performance of changes in the Work under and subject to Article 13, Contractor hereby agrees that Contractor shall have no claim for damages of any kind on account of any delay in commencement of the Work and /or any delay or suspension of any portion of the Work, whether such delay is caused by the Owner or otherwise. Contractor acknowledges that Contractor's sole remedy for any such delay and/or suspension will be an extension of time as may be expressly provided herein.

§ 21.7 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof. Section Omitted.

§ 21.8 CLAIMS FOR CONSEQUENTIAL DAMAGES 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 litigation but, in such event, mediation shall proceed in advance of litigation, 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.

## § 21.9 CLAIMS FOR CONSEQUENTIAL DAMAGES

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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 ~~21.8~~ 21.9 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## § 21.10 RESOLUTION OF CLAIMS AND DISPUTES

§ 21.10.1 Decision of Owner. Claims shall be referred initially to the Owner for decision. An initial decision by the Owner shall be required as a condition precedent to mediation or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ 21.10.2 The Owner will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party; (2) reject the Claim in whole or in part; (3) approve the Claim; (4) suggest a compromise; or (5) advise the parties that the Owner is unable to resolve the Claim if the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 21.10.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Owner in rendering a decision in accordance with Article 21.

§ 21.10.4 If the Owner requests Contractor to provide a response to a Claim or to furnish additional supporting data, Contractor shall respond, within ten (10) days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Owner when the response or supporting data will be furnished or advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

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§ 21.10.5 The Owner will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the Contractor of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Owner shall be subject to further dispute resolution.

§ 21.10.6 Upon a Claim by Owner against the Contractor or at any time thereafter, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 21.10.7 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Owner or mediation or other dispute resolution process.

## § 21.11 MEDIATION

§ 21.11.1 Any claim which is not resolved by mediation shall be litigated in a court of competent jurisdiction in Hartford, Connecticut. The parties waive their rights to a jury trial. Prior to litigation, the parties shall endeavor to commence mediation within sixty (60) days after a Claim arises which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association.

§ 21.11.2 The parties shall split, and pay their respective shares for, the cost of mediator's fee and any filing fees. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## ARTICLE 22 INITIAL INFORMATION

The Contractor's performance of the services set forth in this Agreement is based upon the RFP.

## ARTICLE 23 COMMISSIONING SERVICES

§ 23.1 The Contractor shall consult with the Owner, research applicable criteria, attend Project meetings, communicate with members of the Project team, and issue progress reports. The Contractor shall coordinate the services provided by the Contractor and the Contractor's consultants with those services provided by the Owner and the Owner's consultants.

§ 23.2 The Contractor shall prepare, and periodically update, a schedule of Commissioning Services that shall identify milestone dates for decisions required of the Owner, services furnished by the Contractor, and completion of documentation provided by the Contractor. The Contractor shall coordinate the Commissioning Services schedule with the Owner's Project schedule.

§ 23.3 The Contractor shall make a presentation to explain the Commissioning Services to representatives of the Owner.

§ 23.4 The Contractor shall submit commissioning documentation to the Owner at intervals appropriate to the process for purposes of evaluation and approval by the Owner. The Contractor shall be entitled to rely on approvals received from the Owner to complete the Commissioning Services.

## § 23.6 COMMISSIONING PLAN

The Contractor shall prepare a commissioning plan based on the systems to be commissioned, program and schedule (the "Commissioning Plan"). The Commissioning Plan will describe the commissioning process for the Project and may contain a description of the objectives of the commissioning, a list of participants and their roles and responsibilities, an outline of the management structure, a description of how the plan is to be implemented, the commissioning schedule, specific details about design reviews, a list of systems and components being commissioned and reporting formats.

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## § 23.7 DESIGN INTENT DOCUMENT

§ 23.7.1 The Contractor shall prepare a design intent document with information provided by the Owner and the Owner's consultants and contractors, which document will describe the performance criteria for the systems to be commissioned (the "Design Intent Document"). The performance criteria described in the Design Intent Document shall be quantifiable and measurable through objective testing.

§ 23.7.2 After the Owner's approval of the Design Intent Document, the Contractor shall revise the Design Intent Document to reflect any changes approved by the Owner as an Additional Service.

## § 23.8 DESIGN REVIEW

The Contractor shall review the design of the systems to be commissioned for the limited purpose of determining if the systems as designed will achieve the requirements of the Design Intent Document. The Contractor's review shall be made with such reasonable promptness as to cause no delay in the activities of the Owner or Owner's consultants, while allowing sufficient time in the Contractor's professional judgment to permit adequate review. Review of the design is not conducted for the purpose of determining the accuracy and completeness of the design documents and other details such as quality of materials, appearance, dimensions, quantities and costs. Upon completion of the review, the Contractor shall issue written comments and recommendations.

## § 23.9 COMMISSIONING SPECIFICATIONS

§ 23.9.1 The Contractor shall review the Contract Documents and recommend modifications necessary for coordination with the commissioning requirements and processes, which may include equipment submittals, operation and maintenance manuals, system readiness tests, and personnel training.

§ 23.9.2 The Contractor shall provide commissioning specifications for inclusion in the Contract Documents, which will define the contractor's responsibilities related to commissioning (the "Commissioning Specifications"). The Commissioning Specifications will identify systems to be commissioned and may include detailed checklists, test procedures, required test results and warranty requirements.

## § 23.10 SHOP DRAWING AND SUBMITTAL REVIEW

§ 23.10.1 The Contractor shall review contractors' submittals, such as Shop Drawings, Product Data and Samples for the systems to be commissioned, for the limited purpose of evaluating the system's ability to achieve the requirements of the Design Intent Document. The Contractor's review shall be made with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Owner's consultants or contractors, while allowing sufficient time in the Contractor's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the construction contractor as required by the Contract Documents. The Contractor's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Contractor, of any construction means, methods, techniques, sequences or procedures.

§ 23.10.2 Upon completion of the review, the Contractor shall issue written comments for those submittals that deviate from the requirements of the Design Intent Document. The Owner may choose to accept the deviations, in which case the Contractor shall revise the Design Intent Document and the related Commissioning Specifications as an Additional Service.

## § 23.11 COMMISSIONING MEETINGS

The Contractor shall conduct and document commissioning coordination meetings with the Owner, Owner's consultants, contractors and subcontractors, whose systems are included in the Commissioning Specifications. The Contractor shall coordinate these meetings with the Project schedule.

## § 23.12 REVIEW OF DOCUMENTATION DURING CONSTRUCTION

During construction the Contractor shall review documentation such as meeting minutes, field reports, minor changes in the Work, Construction Change Directives, and Change Orders related to the systems to be commissioned. The Contractor shall report to the Owner changes that will prevent the systems from performing as required by the Design Intent Document. The Owner may choose to accept the changes, in which case the Contractor shall revise the Design Intent Document and the related Commissioning Specifications as an Additional Service.

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## § 23.13 OPERATIONS AND MAINTENANCE MANUAL REVIEW

Prior to the start of operator training, the Contractor shall review the operations and maintenance manuals submitted by the contractors for the systems to be commissioned for conformance with the Commissioning Specifications.

## § 23.14 OPERATOR TRAINING

§ 23.14.1 The Contractor shall review contractors' planning, scheduling, content and documentation for operator training sessions for conformance with the Commissioning Specifications.

§ 23.14.2 The Contractor shall provide operator systems training including the requirements of the Design Intent Document, special design features, operating sequences and limitations, functional performance test procedures, and maintenance cycles of the various systems. This training will begin before the contractor demonstrates the system performance using the functional performance tests. During the commissioning of the systems, the Contractor shall provide operator field training by having the operators assist in the verification of the functional performance tests.

§ 23.14.3 The Contractor shall observe contractors' training and maintain a training log for inclusion into the final commissioning report. The training log will include the attendees' names, training dates, system or equipment on which training was performed, and the name, title and contact information of the trainer.

## § 23.15 TEST REPORT REVIEW

Before the start of functional performance testing, the Contractor shall observe a portion of the system readiness tests and shall review the system readiness test reports required by the Contract Documents for the systems to be commissioned. The Contractor shall report to the Owner any observed deficiencies for correction prior to the start of functional performance testing.

## § 23.16 FUNCTIONAL PERFORMANCE TESTING AND DOCUMENTATION

The Contractor shall direct, observe and document the functional performance tests for each system to be commissioned. The functional performance tests shall follow the procedures included in the Commissioning Specifications. The Contractor shall submit functional performance test reports for each system to the Owner for review.

## § 23.17 DEFICIENCY CORRECTION

The Contractor shall generate a corrective action report for each deficiency identified during functional performance testing. The Contractor shall maintain a log of the corrective action reports. Each deficiency shall be resolved by the appropriate contractor and, after correction of the deficiency, the Contractor shall direct, observe, and document re-testing to confirm that the deficiency has been corrected as an Additional Service.

## § 23.18 FINAL COMMISSIONING REPORT

The Contractor will prepare a final commissioning report including the Commissioning Plan, Design Intent Document, Commissioning Specifications, blank functional performance test procedure forms, system readiness tests reports, functional performance test reports, corrective action reports and log, and operator training plans and log.

## § 23.19 POST-OCCUPANCY REVIEW

The Contractor shall meet with the Owner prior to one year after the Completion Date to review the operations and performance of the commissioned systems and to make appropriate recommendations to the Owner.

## ARTICLE 24 ADDITIONAL SERVICES

§ 24.1 To avoid a delay, the Contractor shall provide the following Additional Services and shall notify the Owner with reasonable promptness. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Contractor, and the Contractor shall have no further obligation to provide those services:

- .1 Review of a contractor's submittal out of sequence from the submittal schedule agreed to by the Contractor;
- .2 Responses to a contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, contractor-prepared coordination drawings, or prior Project correspondence or documentation;

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- .3 Evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to the Design Intent Document and Commissioning Specifications resulting there from; or
- .4 Commissioning Services provided 60 days after the originally scheduled date for completion of the Commissioning Services in the Commissioning Services schedule.

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OWNER

TOWN OF STRATFORD

CONTRACTOR

OWNER (Signature)

CONTRACTOR (Signature)

By:  
*(Printed name and title)*

By:  
*(Printed name and title)*