



# AIA® Document A105® – 2017

## Standard Short Form of Agreement Between Owner and Contractor

**AGREEMENT** made as of the     day of     in the year 2024  
*(In words, indicate day, month and year.)*

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

Town of Killingly, Connecticut  
172 Main Street  
Killingly, CT 06239

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

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

Underground Storage Tank Removal and Demolition  
30 Furnace  
Killingly, CT

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

None

The Owner and Contractor agree as follows.

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

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Architect, dated April 2023 , and enumerated as follows:

Drawings:  
Number Title Date  
See, Exhibit A, attached hereto

Specifications:  
Section Title Pages  
See, Exhibit A, attached hereto

- .3 addenda prepared by the Architect-Owner as follows:  
Number Date Pages

- .4 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and
- .5 other documents, if any, identified as follows:

Owner Request for Proposal, Killingly Department of Engineering for Underground Storage Tank Removal and Demolition, dated April 2024, attached hereto as Exhibit A

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

### § 2.2 Date of Commencement:

Unless otherwise set forth below, the date of commencement shall be the date of this Agreement.  
(Insert the date of commencement if other than the date of this Agreement.)

Date of Commencement shall be May 15, 2024, unless another Date of Commencement is mutually agreed by the parties in writing.

### § 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:  
(Check the appropriate box and complete the necessary information.)

☒ Not later than thirty ( 30 ) calendar days from the date of commencement.

☐ By the following date:

**§2.4 Liquidated Damages.** If the Contractor shall neglect, fail or refuse to complete the Work the Project within the time herein specified, or any proper extension thereof granted by the terms of this Agreement then the Contractor does hereby agree, as part consideration for the awarding of this Contract, to pay the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work the sum of One Hundred Dollars (\$100.00) per calendar day. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, the said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

## ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

(\$ )

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:  
(Itemize the Contract Sum among the major portions of the Work.)

Portion of the Work

Value

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

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

§ 3.4 Allowances, if any, included in the Contract Sum are as follows:  
(Identify each allowance.)

Item	Price
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§ 3.4.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents.

§ 3.4.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor’s costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowance.

§ 3.4.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.5 Unit prices, if any, are as follows:  
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor’s Applications for Payment ~~certified by the Architect, and in place quantities as determined by the Owner,~~ the Owner shall pay the Contractor, in accordance with Article 12, as follows:  
(Insert below timing for payments and provisions for withholding retainage, if any.)

Provided that an Application for Payment is received by the Owner not later than the 25th day of a month, the Owner shall make payment of the amount approved by the Owner to the Contractor not later than the last day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment of the amount approved by the Owner shall be made by the Owner not later than thirty ( 30 ) days after the Owner receives the Application for Payment.

Retainage on progress payments shall be five percent (5%).

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.  
(Insert rate of interest agreed upon, if any.)

Not Applicable. No interest shall apply or be paid under this Agreement or at law. %

§ 4.3.1 Payment, constituting the unpaid balance of the Contract Sum shall be made by the Owner to the Contractor when the Project in fully and finally completed as determined by the Owner.

**§ 4.3.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the Owner approves the Contractor's final Application for **ARTICLE Payment.**

## **ARTICLE 5 INSURANCE**

**§ 5.1** The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5.1:

**§ 5.1.1** Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than one million ( \$ 1,000,000 ) each occurrence, two million ( \$ 2,000,000 ) general aggregate, and two million ( \$ 2,000,000 ) aggregate for products-completed operations hazard. Including coverage for independent contractor operations, contractual liability assumed under the provisions of this Contract, products/completed operations liability, and broad form property damage liability insurance coverage. Exclusions applicable to explosion, collapse and underground hazards are to be deleted when the Work involves these exposures.

**§ 5.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one million ( \$ 1,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ 5.1.3** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ 5.1.4** Workers' Compensation at statutory limits. Workers Compensation Insurance. Covering all of the Contractor's employees to be engaged in the Work under this Contract, providing the required statutory benefits under Connecticut Workers Compensation Law.

**§ 5.1.5** Employers' Liability with policy limits not less than Five Hundred Thousand ( \$ 500,000 ) each accident, Five Hundred Thousand ( \$ 500,000 ) each employee, and One Million ( \$ 1,000,000 ) policy limit.

**§ 5.1.6** ~~The Contractor shall provide builder's risk insurance to cover the total value of the entire Project on a replacement cost basis.~~

### **§ 5.1.7 Other Insurance Provided by the Contractor**

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

#### **Coverage**

#### **Limits**

**§ 5.1.7.1** Professional Liability Insurance with policy limits of two million (\$2,000,000) per claim and two million (\$2,000,000) in the aggregate.

**§ 5.1.7.2** Pollution Liability Insurance with policy limits of two million (\$2,000,000) per occurrence/claim and two million (\$2,000,000) in the aggregate.

**§ 5.1.7.3** Excess/Umbrella Liability- Contractor shall maintain Excess or Umbrella Liability Insurance with a limit of not less than ten million (\$10,000,000), overlaying the coverage under all lines of insurance required by this Contract.

**§ 5.1.7.4** Subcontractors. Contractor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates for each Subcontractor. All coverage for Subcontractors shall be subject to all of the

requirements stated herein. Commercial General Liability coverage shall include independent contractors' coverage, and the Contractor shall be responsible for assuring that all Subcontractors are properly insured.

**§ 5.2** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

**§ 5.3** The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12.

**§ 5.4** Prior to commencement of the Work, in addition to the proof for the additional insured requirements set forth herein, each party shall provide certificates of insurance showing their respective coverages, which shall be Form # CON 32.

**§ 5.5** Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other. The Contractor and the Contractor's Subcontractors and Suppliers waive all rights of subrogation against the Owner, its elected officials, agents, employees, officers, members, and volunteers and their respective insurers. Owner, its elected officials, agents, employees, officers, members, and volunteers and their respective insurers. Shall retain all rights of subrogation.

**§ 5.6** The Contractor shall provide a 100% Performance and Labor and Materials Payment Bond from a surety licensed to do business in the State of Connecticut and acceptable to the Owner.

**§ 5.7** The insurance provisions of this Agreement shall survive termination and/or full or partial performance of the Agreement.

and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the Architect, Architect's consultants, and any **§ 5.8** The Owner, its elected officials, agents, employees, officers, members, and volunteers (collectively, the "Additional Insureds") shall be named as an additional insured on the Contractor's insurance policy(ies). The Contractor shall include a provision in its agreements with its Subcontractors requiring that the Additional Insureds be named as additional insureds on the Subcontractor's insurance policies. The insurance of the Contractor and the insurance of the Contractor's Subcontractors shall be primary to any insurance available to the Additional Insureds, which insurance shall be secondary and non-contributory. The Contractor shall, before commencement of its Work, and prior to the commencement of the Work of any of its Subcontractors, submit to the Owner evidence of the aforementioned insurance requirements from itself and its Subcontractors in the form of a certificate of insurance and additional insured endorsements acceptable to the Owner. Failure by the Contractor to provide the endorsements required in this section shall entitle the Owner to withhold payment from any Application for Payment then due or to become due until such time as the endorsements are provided.

of their agents and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance **§ 5.9** Certificates and Notice of Cancellation. Prior to commencing the Work, the Contractor shall furnish to the Owner certificates of all insurance and endorsements required herein, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the Work, and thereafter upon renewal or replacement of each certified coverage until all operations under this Contract are deemed complete. Certificates shall indicate the type, amount, and class of operations covered, effective date and expiration date of all policies. Required insurance shall be maintained for a period of no less than two (2) years, unless a longer period is required by this Contract, after final payment. An additional certificate(s) evidencing such coverage(s) shall be provided to the Owner thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

or other **§ 5.10** Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, the Contractor shall procure a bond guaranteeing payment of deductibles or self-insured retentions. Contractor shall be responsible for payoff of all deductibles and self-insured retentions.

insurance applicable to the Project, except **§ 5.11** Each insurance policy shall state that the insurance company shall agree to investigate and defend the Owner against all damages, even if groundless.

~~such rights as they have to the proceeds.~~ **§ 5.12** The Contractor's insurance shall be procured from an insurance company with an AM Best Rating of A-, VIII or better, licensed to write such insurance in the State of Connecticut and acceptable to the Owner.

~~of such insurance.~~ **§ 5.13** If any policy is written on a "Claims Made" basis, the policy must be continually renewed for a minimum of two (2) years from the completion date of this Contract. If the policy is replaced and/or the retroactive date is changed, then the expiring policy must be endorsed to extend the reporting period for claims for the policy in effect during the Contract for three (3) years from the completion date.

## **ARTICLE 6 GENERAL PROVISIONS**

### **§ 6.1 The Contract**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

### **§ 6.2 The Work**

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work shall be deemed to include, in the reasonable opinion of the Owner, all items reasonably inferable from the Contract Documents.

### **§ 6.3 Intent**

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.

### **§ 6.4 Ownership and Use of Architect's Owner's Drawings, Specifications and Other Documents**

Documents prepared by the ~~Architect~~ Owner are instruments of the ~~Architect's~~ Owner's service for use solely with respect to this Project. The ~~Architect~~ Owner shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the ~~Architect~~ Projects.

### **§ 6.5 Electronic Notice**

Written notice under this Agreement may be given by one party to the other by email as set forth below.  
(Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)

To be determined

## **ARTICLE 7 OWNER**

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

**§ 7.1.1** If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

**§ 7.1.2** Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

**§ 7.1.3** Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. ~~Intentionally Omitted.~~

## § 7.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

## § 7.3 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 ~~seven~~three day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the ~~Architect~~Owner may withhold or nullify a ~~Certificate of Application~~Application for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, ~~provided the actions of the Owner and amounts charged to the Contractor were approved by the Architect.~~correction.

## § 7.4 Owner's Right to Perform Construction and to Award Separate Contracts

§ 7.4.1 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.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

## ARTICLE 8 CONTRACTOR

### § 8.1 Review of Contract Documents and Field Conditions by Contractor

§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the ~~Architect~~Owner. The Contractor's obligations herein are for the purpose of discovering errors and omissions or adverse field conditions. In the event the contractor fails to promptly report any known error, omission or adverse field condition and commences the Work, the Contractor shall be responsible for all costs associated with any re-work or correction.

### § 8.2 Contractor's Construction Schedule

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's ~~and Architect's information review and approval~~a Contractor's construction schedule for the Work.Work in critical path method format. The Contractor shall update and submit for the Owner's review and approval an updated schedule at least once every thirty (30) days with each of the Contractor's Application for Payment, or sooner if required by Project conditions as may be reasonably requested by the Owner. Failure of the Contractor to submit an updated schedule as provided herein shall entitle the Owner to suspend all payment obligations to the Contractor until the Contractor complies with the provisions herein.

### § 8.3 Supervision and Construction Procedures

§ 8.3.1 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.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the ~~Owner, through the Architect,~~Owner the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner ~~or Architect have~~has made a timely and reasonable objection.



## **§ 8.4 Labor and Materials**

**§ 8.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

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

## **§ 8.5 Warranty**

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 12.5.

**§ 8.5.1** The Contractor shall provide copies of all fully executed warranties and guarantees required by the Contract Documents and/or that are coincident with the materials and equipment installed at the Project within ten (10) days of the date of Substantial Completion or as otherwise provided for Work accepted before or after such date.

**§ 8.5.2** All warranties shall commence as of the date of Substantial Completion of the Work, and shall continue for a period of one (1) year or longer as required by the Contract Documents. In no event shall the commencement of the use of building systems be deemed to commence the term of any warranty unless the Owner has, at that time, actually commenced beneficial use of the Project.

**§ 8.5.3** Substitutions not properly approved and authorized by the Owner shall be considered defective.

**§ 8.5.4** Work, materials or equipment which fails to perform under the proper use and normal wear for intended purposes for a period of one year after the date of Substantial Completion, except where warranties for longer durations are called for by the Contract Documents, shall be considered defective.

**§ 8.5.5** Longer term or extended warranties required by the Contract Documents or coincident with the product, material or equipment provided shall be provided by the relevant Subcontractor, vendor, or manufacturer directly to the Owner, and the Contractor shall obtain documentation of such warranties and transmit such documentation to the Owner for review and approval.

## **§ 8.6 Taxes**

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

## **§ 8.7 Permits, Fees and Notices**

**§ 8.7.1** The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

**§ 8.7.2** The Contractor shall comply with and give notices required by agencies having jurisdiction over 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 full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect-Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

## **§ 8.8 Submittals**

The Contractor shall promptly review, approve in writing, and submit to the Architect-Owner shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

### § 8.9 Use of Site

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

### § 8.10 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.

### § 8.11 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials. . If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor and withheld from any payment then due or that may become due.

### § 8.12 Indemnification

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, its elected officials, agents, employees, officers, members, and volunteers~~ ("Indemnified Parties"), 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.

§ 8.12.1 The Contractor shall defend, indemnify and hold harmless the Indemnified Parties from any and all losses, costs and expenses, including fines and reasonable attorneys' fees incurred by the Indemnified Parties by reason of the violation of such laws, ordinances, regulations and directives, federal, state and local, which are currently in effect or which become effective in the future and caused by the negligence of the Contractor, its Subcontractors or anyone either directly or indirectly employed by any of them.

§ 8.12.2 To the fullest extent permitted by law, the Contractor shall provide a defense to the Indemnified Parties for any claims concerning, arising out of, or relating to the Contractor's or the Contractor's Subcontractor's operations concerning, the Project whether or not such claim has in part its origin in a claim that the Indemnified Parties' conduct was in part responsible for said damage, loss or expense. The duty to defend the Indemnified Parties extends to situations where there is no duty to indemnify or save the Indemnified Parties harmless for that portion of the claim, loss or damage attributable to the Indemnified Parties' conduct.

§ 8.12.3. The defense and indemnification provisions of this Agreement shall survive termination or full or partial performance of the Agreement.

## ARTICLE 9 ARCHITECTOWNER ADMINISTRATION

§ 9.0 For this Project, the Owner will not retain an architect or engineer. All administrative duties will be performed by the Owner.

§ 9.1 The Architect-Owner will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents in the Contract Documents.

§ 9.2 The Architect will-Owner may visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The Architect-Owner will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect-OWNER will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

~~§ 9.4~~ Based on the ~~Architect's~~ Owner's observations and evaluations of the Contractor's Applications for Payment, the ~~Architect will review and certify~~ Owner will review and determine the amounts due the Contractor.

~~§ 9.5~~ The ~~Architect~~ Owner has authority to reject Work that does not conform to the Contract Documents.

~~§ 9.6~~ The ~~Architect~~ Owner will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

~~§ 9.7~~ ~~On written request from either the Owner or Contractor, the Architect~~ The Owner will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

~~§ 9.8~~ ~~Interpretations and decisions of the Architect~~ The Owner's interpretation will be consistent with the intent of, and reasonably inferable from the Contract Documents, and will be in ~~writing~~ writing. The Owner's decision shall be final and binding on the Contractor and the Contractor shall continue diligent performance of the Work without interruption subject to the Contractor's rights to dispute resolution.

~~§ 9.9~~ Intentionally Omitted.

## **ARTICLE 10 CHANGES IN THE WORK**

~~§ 10.1~~ 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, and the Contract Sum and Contract Time may be adjusted accordingly, in writing.

### **§ 10.1 GENERAL**

~~in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance~~ § 10.1.1 Changes in the Work may be accomplished after execution of the Contract, and

~~without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 10 and elsewhere in the Contract Documents.~~

~~by both Owner and Contractor, will not show partiality to either and will not~~ § 10.1.2 A Change Order shall be based upon agreement among the Owner and Contractor. A Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor.

~~be liable for results of interpretations or decisions rendered in good faith.~~ § 10.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order.

~~§ 9.9~~ ~~The Architect's duties, responsibilities,~~ 10.1.4 The Owner reserves the sole and exclusive right to reduce or remove certain portions of the Contractor's Work after the execution of this Agreement by Change Order or Construction Change Directive.

### **§ 10.2 CHANGE ORDERS**

~~and limits~~ § 10.2.1 A Change Order is a written instrument prepared by and signed by the Owner and Contractor stating their agreement upon all of the following:

~~.1 The change in the Work;~~

~~of authority as described in the Contract Documents shall not be changed without written consent.~~ .2 The amount of the adjustment, if any, in the Contract Sum; and

~~of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.~~ .3 The extent of the adjustment, if any, in the Contract Time.

§ 10.2.2 Methods used in determining adjustments to the Contract Sum will include those listed in Section 10.3.3 below.

## **ARTICLE 10 CHANGES IN THE WORK**

### **§ 10.3 CONSTRUCTION CHANGE DIRECTIVES**

~~§ 10.1 The Owner, without invalidating the Contract, may~~ 10.3.1 A Construction Change Directive is a written order prepared by and signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract, Contract consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time being adjusted accordingly.

~~shall be adjusted accordingly, in writing.~~ § 10.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

~~If the Owner~~ § 10.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;
- or
- .4 As provided in Section 10.3.7.

The amount of allowable overhead and Contractor cannot agree profit to the Contractor for an increase in the Cost of the Work shall be 10% of the Contractor's net cost, unless the same is governed by a unit price and if so the unit price shall include all overhead and profit.

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

§ 10.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 10.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 10.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner, shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 10.3.3.3, the Contractor shall keep and present, in such form as the Owner shall pay may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 10.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

~~the Contractor its actual cost plus~~ § 10.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the

Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

~~reasonable overhead and profit.~~ **§ 10.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of monthly payments for those costs in the Owner's reasonable and good faith judgment, to be reasonably justified.

**§ 10.3.10** When the Owner and Contractor agree with a determination made by the Owner, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

**§ 10.2** The ~~Architect~~ Owner may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the ~~Owner and~~ Contractor. The Contractor shall proceed with such minor changes promptly.

**§ 10.3** If ~~concealed or unknown physical conditions are encountered at the site~~ the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions 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 subject to equitable adjustment.~~ (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 5 days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost or time required for, performance of any part of the Work, will consider in good faith an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Contractor in writing, stating the reasons. If the Contractor disputes the Owner's determination the Contractor shall nevertheless diligently proceed with the Work subject to the Contractor's right to dispute resolution as provided herein.

## ARTICLE 11 TIME

**§ 11.1** Time limits stated in the Contract Documents are of the essence of the Contract.

**§ 11.2** If the Contractor is delayed at any time in ~~progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractor's control,~~ the ~~Contract Time shall be subject to equitable adjustment.~~ the commencement or progress of the Work by an act or neglect of the Owner, or of an employee of either, or of a separate contractor employed by the Owner, or if and to the extent caused by the negligence of the Owner; or by changes ordered in the Work pursuant to Article 10; or by delays associated with the delivery of materials ordered by the Owner for which the Contractor is not responsible and which impact the critical path of the construction schedule; or acts of God (such as tornado, hurricane, flood, etc.), or unusual delays by relevant governmental authorities in performing inspections and/or issuing governmental approvals which are a condition precedent to the issuance of a certificate of occupancy (temporary or permanent) or failure or unusual delay by any local utility (i.e., electricity, water, sewer) providing services to the Project that impact the critical path of the construction schedule or is necessary to obtain a certificate of occupancy (temporary or permanent), then the Contract Time shall be extended by Change Order or Constructive Change Directive for such reasonable time as the Owner may determine and the construction schedule shall be revised accordingly. In order for the Contractor to obtain an extension of time, the Contractor must prove to the Owner that the cause of the delay will extend the critical path of the construction schedule leading to the occupancy or use of the Project. Such extensions of Contract Time shall apply only to delays for which the Contractor has no responsibility. If a delay is attributable to both the Contractor and the Owner (including parties for which each is responsible), then entitlement to an extension of Contract Time shall apply proportionately

**§ 11.3** ~~Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.~~ Notwithstanding anything to the contrary in the Contract Documents, an extension of Contract Time, to the extent permitted herein, shall be the sole remedy of the Contractor for any (1) delay in the start,

prosecution, or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, (4) supply chain delays, (5) delays caused by government orders, (6) delays caused by pandemics or other public health concerns, or (7) other similar claims, whether or not such claims are foreseeable, contemplated, or unanticipated. In no event is the Contractor entitled to any compensation or recovery of any damages, in connection with any claim, including without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents, including without limitation, ordering changes in the Work, or directing the suspension, rescheduling or correction of the Work, regardless of the extent or frequency of the Owner's exercise of such rights or remedies, are not to be construed as active interference with the Contractor's performance of the Work.

## ARTICLE 12 PAYMENTS AND COMPLETION

### § 12.1 Contract Sum

The Contract Sum stated in this Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. Unless otherwise provided in Section 3.1, the Contractor and the Owner shall agree on a schedule of values allocating the entire Contract Sum to the various portions of the Work, which shall be used as the basis for reviewing the Contractor's Applications for Payment. This schedule shall not be amended, unless agreed to by the Owner and the Contractor in writing.

### § 12.2 Applications for Payment

**§ 12.2.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the ~~Architect-Owner~~ an itemized Application for Payment for Work completed in accordance with the values or unit prices stated in this Agreement. The Application shall be supported by data substantiating the Contractor's right to payment as the Owner ~~or Architect~~ may reasonably require, such as evidence of payments made to, and waivers of liens and Claims from, subcontractors and suppliers. 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.

**§ 12.2.2** 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.

**§ 12.2.3** Provided that the Owner shall have paid the Contractor all amounts properly due and owing under the Contract Documents, the Contractor shall defend, indemnify, and hold the Owner harmless from any liens, claims, security interests or encumbrances filed by the Contractor, any Subcontractor, Sub-subcontractor or anyone claiming by, through or under them. As a condition of Payment, the Contractor shall provide a fully executed waiver with respect to all Work for which payment has been made by the Owner through the previous Application for Payment.

**§ 12.2.4** The Contractor agrees that it shall take whatever action is reasonably necessary to remove or discharge any lien, claim, security interest or encumbrance placed on the Project in favor of any Subcontractor, material supplier, or other person or entity making a claim by reason of having provided labor, materials and equipment related to the Work for which the Contractor is responsible, including without limitation, discharging by substitution of a bond. The Contractor agrees that it shall take such action within twenty (20) days of written receipt of notice and evidence of such lien, claim, security interest or encumbrance from the Owner.

### § 12.3 Certificates for Payment

~~The Architect will, within seven~~ Owner will, within ten days after receipt of the Contractor's Application for Payment, either (1) ~~issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor;~~ (2) ~~issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in part; or~~ (3) ~~withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole. If certification or notification is not made within such seven day period, the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.~~ approve the Application for Payment in its entirety or

in part or disapprove all or part of the Contractor's Application for Payment. The Owner shall provide to the Contractor in writing the reasons for such disapproval of all or part of the Contractor's Application for Payment. The Owner, in all events, shall pay approved amounts in the Contractor's Application for Payment pursuant to the terms of this Agreement. The Owner may withhold payments then due or that may become due in the future for defective work or other damages caused by the Contractor.

#### **§ 12.4 Progress Payments**

~~§ 12.4.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.~~ The Owner shall make payments to the Contractor as provided herein.

**§ 12.4.2** The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

~~§ 12.4.3 Neither the Owner nor the Architect shall~~ The Owner shall not have responsibility for payments to a subcontractor or supplier.

**§ 12.4.4** 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 requirements of the Contract Documents.

#### **§ 12.5 Substantial Completion**

**§ 12.5.1** 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 the Owner can occupy or utilize the Work for its intended ~~use~~ use as reasonably determined by the Owner.

**§ 12.5.2** When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the ~~Architect and the Architect-Owner~~ and the Owner will make an inspection to determine whether the Work is substantially complete. When the ~~Architect-Owner~~ determines that the Work is substantially complete, the ~~Architect-Owner~~ shall prepare a Certificate of Substantial Completion or other document addressing Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, 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.

**§ 12.5.3** The Owner reserves the right to take possession and occupy any portion of the Project prior to the completion of the entire Project provided that a temporary certificate of occupancy has been obtained with respect to such portion of the Project. Such completion and occupancy, however, shall not interfere with the Work.

#### **§ 12.6 Final Completion and Final Payment**

**§ 12.6.1** Upon receipt of a final Application for Payment, the ~~Architect-Owner~~ will inspect the Work. When the ~~Architect-Owner~~ finds the Work acceptable and the Contract fully performed, the ~~Architect will promptly issue a final Certificate~~ Owner authorize the Contractor to submit a final Application for Payment.

**§ 12.6.2** Final payment shall not become due until the Contractor submits to the ~~Architect-Owner~~ releases and waivers of ~~liens, liens and claims~~, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

~~§ 12.6.3~~ **§ 12.6.3** Acceptance of final payment by the Contractor, a subcontractor or supplier shall constitute a waiver of claims by that payee ~~except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.~~ payee.

### **ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

## ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the ~~Architect-Owner~~ as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

## ARTICLE 15 MISCELLANEOUS PROVISIONS

### § 15.1 Assignment of Contract

~~Neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Contractor shall not assign the Contract in whole or in part or any proceeds from the Contract without the written consent of the Owner. Any such assignment shall be null and void and have no legal effect.~~

### § 15.2 Tests and Inspections

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the ~~Architect-Owner~~ requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

### § 15.3 Governing Law

The Contract shall be governed by the law of the place where the Project is located, ~~excluding without regard to that~~ jurisdiction's choice of law rules.

## ARTICLE 16 TERMINATION OF THE CONTRACT

### § 16.1 Termination by the Contractor

~~If the Work is stopped under Section 12.3 for a period of 14 days Owner fails to make payment to the Contractor then due and owing in accordance with the terms of this Agreement for a period of 30 days past the date such payment is due and owing through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and accepted by the Owner and the reasonable and documented costs incurred by reason of such termination. In no event shall the Contractor be entitled to anticipated overhead and profits on Work not performed or other damages of any kind or nature.~~

### § 16.2 Termination by the Owner for Cause

§ 16.2.1 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 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the ~~Owner, after consultation with the Architect, Owner~~ may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and



.2 finish the Work by whatever reasonable method the Owner may deem expedient.

**§ 16.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 16.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

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

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 executed and accepted by the Owner, and reasonable and documented costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~ termination.. In no event shall the Contractor be entitled to anticipated overhead and profits on Work not performed.

## **ARTICLE 17 OTHER TERMS AND CONDITIONS**

*(Insert any other terms or conditions below.)*

**§ 17.1** Any deviation from the Contract Documents must be completely detailed in writing by the Contractor and approved in writing by the Owner prior to the performance of said Work.

**§ 17.2** The Contractor agrees that all persons working on behalf of the Contractor shall obey the rules and regulations established by the Owner and shall obey the reasonable directions of the Owner's employees. The Contractor shall be responsible for the acts and conduct of its employees, Subcontractors, and agents while on the Owner's premises. The Contractor shall take all necessary measures to prevent injury and loss to persons and property located on the Owner's premises. The Contractor shall be responsible for all damages to persons or property caused by the Contractor, its employees, Subcontractors and agents. The Owner reserves the right to approve and /or reject any personnel assigned to any phase of the Project for any reason the Owner deems appropriate in its sole discretion.

**§ 17.3** If the Contract entails any exposure to a regulated material, including, but not limited to, asbestos or lead, the Contractor certifies that it and each of its Subcontractors and their employees shall be certified and trained under all OSHA and other relevant regulations for such Work.

**§ 17.4** State, federal, or other grant programs may fund some or the entire Contract. The Contractor is advised that such funding programs may include contractual provisions binding on contractors and which may, for example, require audits or certifications under oath that the Contractor has not been debarred, suspended, or excluded from any publicly funded project or programs.

**§ 17.5** The Contractor is required to comply with all provisions of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, Executive Orders 11246, 11375, 11478 and, if applicable, the Connecticut Fair Employment Practice Law.

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

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

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

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

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

(6) The Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency project.

Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission on Human Rights and Opportunities may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(7) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission on Human Rights and Opportunities, of its good faith efforts.

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

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

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

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

(12) The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the

employment practices and procedures of the Contractor which relate to the provisions of this section and section 46a-56.

§ 17.7 This Contract is subject to prevailing wages as defined by Connecticut law, section 31-53, as amended. The Contractor shall include the costs of such wages in the Contract Sum. The wages paid on an hourly basis to any mechanic, laborer or workman employed upon the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such employee to any employee welfare fund, as defined in subsection (h) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such employees to any such employee welfare fund shall pay to each employee as part of his wages the amount of payment or contribution for his classification on each pay day

§ 17.8 If the Contractor is a non-resident Contractor then the Contractor and Owner shall comply with all laws established by the state of Connecticut for such non-resident contractors.

§ 17.9 The American Rescue Plan Act ("ARPA") is providing funding for the Project. As a result, the following provisions apply to this Contract.

(A) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

By execution of the Contract, the Contractor confirms that it and its Subcontractors are Affirmative Action/Equal Opportunity Employers.

The Owner is an Equal Opportunity Employer. As such, the Owner and all Contractors and their subcontractors agree to prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and comply with all applicable Federal civil rights laws and implementing regulations.

During the performance of this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or supplier. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(B) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(C) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(D) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(E) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(F) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(G) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

#### (H) Domestic Preferences for Procurement

Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all sub-awards including all contracts and purchase orders for work or products under this award. For purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and

2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

The Contractor agrees to comply with this requirement and must include the requirements of this section in all subawards including all contracts and purchase orders for work or products under this award.

#### (I) Procurement of Recovered Materials

The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items until the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### (J) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

For any federally assisted contract, the Contractor must certify to the Owner that the Contract (or any extension or renewal) does not contain covered telecommunications equipment. The Owner is prohibited to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

#### (K) Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles .

#### (L) Reducing Text Messaging While Driving.

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers .

(M) Publications.

Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [the Town of Killingly, CT] by the U.S. Department of the Treasury .”

#### **§ 18.1 RESOLUTION OF CLAIMS AND DISPUTES**

Unless another method of dispute resolution is agreed to by the Owner and the Contractor, all claims and disputes shall be resolved by trial in a court of competent jurisdiction. The term “Claim” is demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. It also includes other disputes and matters in question between the Owner and the Contractor arising out of or relating to the Contract. The responsibility to substantiate claims shall rest with the party making the claim.

#### **§ 18.2 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed to in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments when due in accordance with the Contract Documents that are not the subject of a good faith dispute.

**§ 18.3 NO DAMAGE FOR DELAY.** In all events, the Contractor shall have no Claim for damages or costs of any kind resulting from a delay in the Work as demonstrated by the Contractor’s schedule of critical path activities, regardless of whether all or part of such delay may be in any way attributable to the acts, the failure to act, or the omissions of the Owner, the Owner’s agents or representatives, or the Owner’s consultants. The Contractor agree that the Contractor’s sole remedy for such delay shall be an extension of time, which may be granted or denied in accordance with the terms of this Agreement.

**§ 18.4 WAIVER OF IMPACT CLAIMS.** In all events, the Contractor waive all kinds of impact claims, including but not limited to, efficiency, loss of productivity, trade stacking, disruption, re-sequencing, and the like, regardless of whether all or part of such impact may be in any way attributable to the acts, the failure to act, or the omissions of the Owner, the Owner’s agents or representatives, or the Owner’s consultants.

**§ 18.5** The Contractor shall include similar No Damage For Delay and Waiver of Impact Claim provisions in any agreements that either party executes with any Subcontractors, suppliers and any other persons or entities that either party employs to perform the Work, and shall name the other party as third-party beneficiaries of such provisions.

#### **§ 18.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor waives Claims for consequential damages arising out of or relating to this Contract. This waiver includes 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.

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

*(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)*

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

| Town of Killingly, CT

(Printed name and title )

\_\_\_\_\_  
**CONTRACTOR** (Signature)

\_\_\_\_\_  
(Printed name and title )

LICENSE NO.:

JURISDICTION:





## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification 12:34:52 ET on 04/23/2024 under Order No. 4104242227 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A105™ - 2017, Standard Short Form of Agreement Between Owner and Contractor, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

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*(Signed)*

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*(Title)*

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*(Dated)*